

COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

STAFF REPORT

STATE DEPARTMENT AND INTELLIGENCE COMMUNITY INVOLVEMENT

IN DOMESTIC ACTIVITIES

RELATED TO THE IRAN/CONTRA AFFAIR

September 7, 1988

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September 7, 1988

The Honorable Dante B. Fascell
Chairman
Committee on Foreign Affairs
2170 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

We hereby submit the final staff report of our investigation on the involvement of the State Department Office of Latin American Public Diplomacy (S/LPD) in the establishment and supervision of a private, domestic network designed to influence the Congress, the media and public opinion on behalf of the Administration's policies as related to the Iran/Contra affair. Since the interim report, which we provided to you on March 18 of last year, the investigations by the Iran/Contra Committees, General Accounting Office and the State Department Inspector General, as well as our subsequent follow-up investigation, have revealed a much wider, and potentially much more serious, violation of U.S. laws and regulations than our original interim report had indicated.

Although the Iran/Contra Committees were constrained by pressures of time and limited resources from pursuing many of the leads that were developed during that investigation -- and the General Accounting Office and State Inspector General's reports were narrowly focused on certain aspects of S/LPD's activities -- the combined information developed by those three investigations, as well as our own investigation, present a situation which may require further investigation. Such investigation may wish to focus on the extent to which the CIA and various intelligence components of the Department of Defense conspired, through the staff of the National Security Council, to use the State Department as a cover for a domestic operation which went far beyond the legal and ethical scope of their authority.

The Honorable Dante B. Fascell
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The staff report indicates the extensive involvement of intelligence community personnel by the Office of Latin American Public Diplomacy to establish, maintain and manage private, domestic entities engaged in fundraising, lobbying, propaganda and manipulation of the media in contravention of U.S. laws and regulations.

While the report provides a clear indication that such activities occurred and that they were deliberately hidden from public view, there are many individuals who were intimately involved in these activities who were never questioned by the Iran/Contra Committees about these matters and who have not been available to any of the other investigations that have been conducted. Many important documents, which were discovered by the GAO in the files of S/LPD, were never made available to our Committee nor to the Iran/Contra Committees despite our request and assurances that such materials would be forthcoming. There may be other documents in the files of the CIA, DOD and the Department of State which should be sought in order that a complete picture may be obtained. Any subsequent investigation will almost certainly need to use Congressional subpoena power in order to obtain these documents and the testimony of key witnesses.

Appended to the report are copies of our interim staff report of March 18, 1987, two reports from the GAO and a report by the State Department's Inspector General.

Vic Zangla, the General Accounting Office official who has been working with the Foreign Affairs Committee for the past year and a half, assisted with the compilation and evaluation of the documentation upon which this report was based.

Sincerely yours,


R. Spencer Oliver
Chief Counsel


Bert Hammond
Staff Consultant

Encls.

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**STATE DEPARTMENT AND INTELLIGENCE COMMUNITY INVOLVEMENT
IN DOMESTIC ACTIVITIES
RELATED TO THE IRAN/CONTRA AFFAIR**

OVERVIEW

In March 1987, the staff of the Committee on Foreign Affairs issued a preliminary report of its investigation into the award of six contracts by the State Department's Office of Public Diplomacy for Latin America and the Caribbean (S/LPD) to International Business Communications (IBC) and its principal, Frank Gomez. The report raised a number of key questions, including:

Why was a noncompetitive \$276,000 State Department contract with IBC classified SECRET during the same time period that IBC was engaged in transferring monies to Lake Resources, an account controlled by Oliver North for the purpose of aiding the Contras? Were any of the State Department contract monies in fact used illegally to lobby Members of Congress? Was S/LPD engaged in prohibited propagandistic activities? Were State Department monies illegally diverted to aid the Contras?

Due to the difficulty the Committee staff encountered in its efforts to obtain relevant information from the State Department and to the fact that IBC had been involved in funneling money to secret Swiss Bank accounts, many answers to questions raised in the report were not immediately forthcoming. It was the Committee staff's opinion that

these pressing questions could only be properly reviewed by the Select Committee to Investigate Covert Arms Transactions with Iran. The Chairman of the Committee on Foreign Affairs, Rep. Dante Fascell, then forwarded all relevant documents in the Committee's possession to the Select Committee.

On March 31, 1987, Chairman Fascell and Rep. Jack Brooks, Chairman, Committee on Government Operations, issued a joint letter to the General Accounting Office (GAO) requesting it to conduct an investigation and render a legal opinion on the legality and propriety of certain activities of S/LPD. Two separate reports were subsequently prepared by GAO.

The first GAO report, issued 9/30/87, examined whether or not S/LPD had been involved in illegal lobbying and propaganda activities. The report concluded that S/LPD's activities involving the preparation and dissemination of certain types of information violated a restriction on the use of appropriated funds for publicity and propaganda purposes not authorized by the Congress. The report also noted that the available evidence did not support a conclusion that antilobbying statutes had been violated. (GAO auditors, however, informed Committee staff that documents in the possession of the Iran/Contra Select Committees, which were not made available to GAO until after its report had been issued, would have required GAO to reevaluate S/LPD's compliance with the anti-lobbying statutes.)

The second GAO report, issued 10/30/87, assessed the contracting activities of S/LPD. The report found that S/LPD generally did not follow federal regulations governing contractual procedures.

In addition to the GAO reports, the State Department's Office of

Inspector General (OIG) issued a report that examined the Department's contracts with International Business Communications (IBC) and Frank Gomez, one of its principals. The OIG's report concluded that many of the purchase orders and contracts awarded by S/LPD were questionable in the later periods as S/LPD's staff grew and gained experience; that the acquisition process for awarding and administering the purchase orders and contracts was mismanaged; that one contract was improperly classified SECRET, apparently to avoid competition and public disclosure; that some of the charges in the final contract between S/LPD and IBC were questionable; that violation of ethical standards and/or conflict of interest restrictions may have occurred in the case of two individuals; and that information provided by the Department to Congressional requesters was inaccurate, incomplete, and misleading. The OIG's report also recommended specific actions to remedy administrative problems identified in the report.

This final staff report on the activities of S/LPD serves both as a summary of the previously described reports on the Office of Public Diplomacy for Latin America and the Caribbean and as a description of how a relatively obscure office in the State Department played a central role in the creation and management of the private network involved in the Iran/Contra affair. It is the Committee staff's contention that a preponderance of documents obtained by the staff, as well as those released by the Select Committees, demonstrates that S/LPD was set up and managed by operatives in the National Security Council (NSC) who maintained close ties with Oliver North and former CIA Director Casey. The NSC staff succeeded in having Otto Reich named as the Director of the new Office Latin America of Public Diplomacy which reported directly

to the NSC. IBC's two principals--Richard R. Miller, former head of public affairs at AID, and Francis D. Gomez, former public affairs specialist at the State Department and USIA--were then hired by S/LPD through a series of sole source, no-bid contracts to carry out a variety of activities on behalf of the Administration's policies in Central America.

During the same period that it had been receiving payments from the State Department totalling in the hundreds of thousands of dollars, IBC also served as the conduit through which millions of dollars from the illegal sales of weapons to Iran were diverted for use by the Contras as well as other purposes. Also while under contract to the Office of Public Diplomacy, Miller and Gomez participated in activities designed to influence the media and public to support the President's Latin American policies, including sophisticated television ad campaigns that were targeted at Members of Congress who were not supportive of the President's Central America policy. Many of these activities by design were covert. Johnathan Miller, Ambassador Reich's Deputy at S/LPD (who later resigned from the White House staff when it was revealed that he had assisted Oliver North in cashing travellers checks for the Contras), for example, described Gomez as a "cut-out" who once made a clandestine trip in Central America and promoted media interviews and background briefings with representatives of the Democratic Resistance in Nicaragua on behalf of S/LPD, without acknowledgment of the State Department's role.

In the course of assisting the Contras with their public relations, Miller and Gomez were introduced to Oliver North and Contra fundraiser Carl "Spitz" Channell. Under the direction of North and with the

financial assistance of Channell, IBC quickly became a central player in the so-called "enterprise." IBC's role, in fact, was so highly valued that it was described by one White House official as "the White House outside the White House."

THE GAO AUDITS

Responding to a March 31, 1987, joint request issued by Chairmen Fасcell and Brooks, the GAO released two separate reports on the activities of S/LPD. The first report issued by the Comptroller General on 9/30/87 concluded that S/LPD had "engaged in prohibited, covert activities designed to influence the media and the public to support the Administration's Latin American policies." The use of appropriated funds for these activities constituted "a violation of a restriction on the State Department annual appropriations prohibiting the use of federal funds for publicity or propaganda purposes."

GAO's conclusion centered on S/LPD's decision to use a university professor, John F. Guilmartin, Jr., an adjunct professor of history at Rice University, to write a newspaper article in support of the Administration's Central America policy without alerting readers or, apparently, the newspaper that Guilmartin had been a paid consultant to S/LPD.

The Guilmartin article was one of five "white propaganda" operations described in a March 13, 1985, memorandum from S/LPD to the Assistant to the President and Director of Communications. The confidential memorandum stated the following about the Guilmartin

article:

"Attached is a copy of an op-ed piece that ran two days ago in The Wall Street Journal. Professor Guilmartin has been a consultant to our office and collaborated with our staff in the writing of this piece. It is devastating in its analysis of the Nicaraguan arms build-up. Officially, this office had no role in its preparation."

Another item in the memorandum describes the use of a "cut-out" to arrange visits to various news media by a Nicaraguan opposition leader. Although the term is not defined, it appears to reflect an intention to hide the fact that the opposition leader's visits were being arranged by the Government.

Section 501 of the Departments of Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations Act, 1985, states: "No part of an appropriation contained in the Act shall be used for publicity or propaganda purposes not authorized by the Congress." Although the legislative history of section 501 is silent as to the intended effect of the restriction, GAO has had numerous opportunities to interpret language similar to section 501 as prohibiting covert propaganda activities of an agency, which applies to the situation of Professor Guilmartin and visits of various Nicaraguan opposition leaders arranged by S/LPD.

The GAO report concludes that "the described activities are beyond the range of acceptable agency public information activities because the articles prepared in whole or part by S/LPD staff as the ostensible position of persons not associated with government and the media visits arranged by S/LPD were misleading as to their origin and reasonably

constituted 'propaganda' within the common understanding of that term."

On October 30, 1987, GAO issued a second report on the State Department's administration of certain public diplomacy contracts.

In its evaluation of LPD's use of contractors, GAO reviewed 25 contracts S/LPD entered into since the office was established. The contracts were valued at approximately \$263,000. Most of the contracts reviewed involved the submission of written products by individuals and, in some instances, companies.

The GAO audit found that S/LPD did not adhere to federal regulations governing contractual procedures. Specifically, the audit reached the following three conclusions:

1. The justifications to support the exclusive use of sole-source contracting by LPD were inadequate.
2. Various other procurement requirements were not adhered to in awarding contracts, such as encouraging competition, obtaining required contract officer approvals before engaging contractors, and, in one case, abiding by limitations on the salary paid to a retired military officer.
3. Many products were different from those contracted for with no evidence that agreement was reached on changes to contract specifications.

With respect to the issue of sole source contracting, the GAO study concluded that all 25 contracts under review did not meet federal requirements for sole source justification. The contracts contained no description of how the writers selected were unique and why no one else could perform the desired requirements; nor did the contracts contain

any description of efforts made to ascertain whether equally qualified writers were available. Under the requirements of The Competition in Contracting Act of 1984, both of these conditions must be fulfilled before a sole source contract can be awarded.

In general, GAO found little evidence that S/LPD had made any effort to locate other sources to compete on S/LPD contracts. Even a sole source procurement requires such an effort to help support the sole source justification. In the one instance where the Department's Procurement Office located a competitive source, S/LPD withdrew its requirement for these services before the potential contractor could be interviewed. At the time, these services were being provided by Mark Richards Associates, Inc., who had performed services for S/LPD under a series of sole source contracts since July 1984. Later in the year, however, S/LPD, in an about-face, requested the continued services of Mark Richards Associates, whose principal, Colonel Mark Richards, had extensive experience in military intelligence. In its request to renew Richard's contract, S/LPD cited "unusual and compelling urgency" as the basis to award a sole-source procurement. S/LPD also added that "the character and sensitivity of the services precluded disclosure of the contractual arrangement to the public."

GAO also noted that Mark Richards, an S/LPD employee detailed from DOD and a soon-to-be-retired Air Force Colonel, would be subject to dual compensation limitations if employed as a consultant to S/LPD after his retirement from federal service. This would reduce his military retirement pay, which, according to Colonel Richards, was unacceptable. Accordingly, Colonel Richards incorporated himself, and the Department negotiated a sole-source contract with Mark Richards Associates for

media consultant services. This permitted him to continue working for S/LPD without a reduction in his retirement pay. Between July 1984 and February 1986, Mark Richards Associates received approximately \$136,000. This arrangement, however, circumvented two Office of Management and Budget (OMB) circulars that restrict the use of contracts to avoid salary limitations for former government employees.

Of the 25 contracts GAO reviewed, 16 specified one or more original written products (41 in all). Most of the contractor products GAO obtained, however, differed substantially from the contract scope of the work. According to S/LPD personnel, few were incorporated into S/LPD publications.

GAO's analysis was hampered by the lack of work products in S/LPD's files. Auditors were only able to obtain 28 of the 41 research papers. Of the 28 work products obtained by GAO, only 13 addressed the topic specified in the original scope of work. In the other cases, the product for which there was an "urgent need" was not produced; rather, a substitute topic was addressed.

REPORT OF THE STATE DEPARTMENT'S OFFICE OF INSPECTOR GENERAL

In response to a March 1987 request from the Secretary, the staff from the Office of Inspector General (OIG) examined the Department's contracts with International Business Communications (IBC) and Frank Gomez, one of its principals. The examination covered six purchase orders and contracts totalling approximately \$436,000 with IBC or Frank Gomez between February 1984 and September 1986. In July 1987, the OIG released its report containing the following findings:

1. Need for the Contracts—There was justification for the initial

purchase orders for outside assistance, during a temporary start-up situation in S/LPD early in 1984, but the practice continued through fiscal 1986, after the urgency and the original justification had passed.

2. The Acquisition Process—The practices followed in the procurements with Frank Gomez, IBC, and INSI (Institute for North South Issues, a non-profit foundation operated by Frank Gomez) were generally contrary to proper acquisition policies and procedures and failed to meet the fundamental requirements of the Federal Acquisition Regulation (FAR).

In certain instances, Frank Gomez and IBC only entered into formal contractual arrangements with the Department after S/LPD had directed IBC to begin the work. For example, an order awarded to IBC in the amount of \$24,400 was signed by the Department's contracting official almost one month after IBC was to have completed the work and almost four months after IBC had been directed to begin the work by S/LPD officials. The FAR clearly states that the contracting officer is responsible for the control of the contracting process and that contracts may be entered into only by contracting officers.

The OIG determined that all contracts awarded by the Department's procurement office to Mr. Gomez, IBC, and INSI were based on inadequate sole source justifications. In the final \$276,000 contract with IBC another feature of contracting was added—the Competition in Contracting Act of 1984 (CICA). At the time this contract was being considered by S/LPD officials, The FAR had been changed to include the CICA provisions. The Department's contracting officials brought the new FAR provisions to S/LPD's attention, including the new CICA requirements to publicize even proposed sole source awards. This contract was

classified SECRET by S/LPD officials, not publicized by the Department, and was eventually awarded on a sole source basis approximately 11 months after IBC began the work at S/LPD's direction. Moreover, IBC eventually received approximately \$240,000 dollars for its work on the contract, even after the fact that Robert Kagan, who succeeded Ambassador Reich as the Director of the Office of Public Diplomacy, requested in a May 28, 1986 memo to Executive Director Patrick Kennedy that the funds be deobligated.

Federal acquisition regulations require that all proposed contracts over the amount of \$10,000 be published in the Commerce Business Daily (CBD). None of the purchase orders of contracts over \$10,000 awarded to Mr. Gomez or IBC were publicized by the Department's contracting officials. In addition, purchase orders for Mr. Gomez and IBC were made on a fragmented basis, often for less than \$10,000, apparently to circumvent the acquisition requirements.

3. Reasonableness of Prices and Performance—The OIG's audit questioned some charges contained in the FY 1986 contract for \$276,000. Specifically, the report questioned the travel and ADP equipment costs charged by IBC. The OIG report indicated the IG's office would conduct a cost incurred audit at a future date. In December 1987, the OIG completed the audit and disapproved approximately \$84,000 in costs claimed by IBC under the contract. The OIG has recommended that the Department attempt to recover these funds from IBC. To date, the funds have not been recovered.

On September 10, 1984, the Foreign Service Institute (M/FSI) placed a training order for \$16,198 with IBC. The training order required IBC to conduct seminars in El Salvador on improving press relations for El

Salvadoran military officials in late August and early September of 1984. The use on an M/FSI training order to obtain the services of IBC appeared to be inconsistent with the principles that generally apply to M/FSI training orders. Normally, M/FSI arranges for training for State Department employees that is job related. The training order with IBC involved training for foreign officials and was conducted by a private company in a foreign country. Moreover, the OIG discovered in its discussions with IBC officials that the training seminar never took place; instead, individual counseling took place with 20 to 25 individuals. The OIG has recommended that action be taken to recover the funds from IBC since the seminar never took place. To date, the funds have not been recovered.

4. Ethical/Conflict of Interest Considerations--The OIG determined that Daniel Jake Jacobowitz, a Department of Defense intelligence specialist detailed to S/LPD from June 1984 to June 1986, may have violated federal ethical standards by introducing his sister, Fran Jacobowitz, who was a specialist in establishing and operating mail distribution systems, to the head of S/LPD and to Frank Gomez of IBC. S/LPD subsequently contracted with the Institute for North South Issues (INSI) and IBC for analysis, design, and operation of a mail distribution system. The sister was hired by IBC to direct the work under such contracts. The OIG referred the matter to the DOD Inspector General, who, after investigating the incident, determined that Jacobowitz had violated employee standards of ethical conduct. A letter of reprimand was placed in Jacobowitz's personnel file.

Prior to being employed by S/LPD, Frank Gomez was employed as the Director of Foreign Press Centers for USIA. He retired from that agency

on February 14, 1984 and the performance date for the work called for by the purchase order with S/LPD was February 14, 1984 through May 31, 1984.

Documents contained in the S/LPD files indicate that, while he was employed by USIA, Frank Gomez established the Institute for North-South Issues and negotiated with USIA and the State Department for contract work after he retired. The same purchase order was also negotiated with S/LPD while he was employed by USIA.

The OIG referred this matter to the USIA IG on May 15, 1987 to determine whether any conflict of interest laws or regulations were violated. To date, the USIA IG has not initiated any action.

5. Congressional and Press Guidance—The OIG determined that a small but important portion of information provided to Congressional requesters and as press guidance was either inaccurate, incomplete, or potentially misleading. In addition, the OIG concluded that the Department's responsiveness to requests for information by members of Congress and their staffs had been slow and fragmented.

6. Classification of the FY 1986 Contract—S/LPD classified its final \$276,000 contract with IBC as SECRET, contending to officials that it contained sensitive information of a national security nature. However, the contract was virtually a continuation of an unclassified FY 1985 contract, except for the addition of an unclassified document distribution system. The OIG's report concluded that "there was nothing of a national security or even a sensitive nature in the contract. In our opinion, the real reason for classification was to avoid publication in the CBD and possible challenges to the sole source contractual relationship with IBC."

The OIG's report also contains a number of specific recommendations relating to the Department's award and administration of contracts. All of these recommendations, including those recommendations to recoup monies from IBC, have been accepted by the Department. In addition to these recommendations, it is the Committee staff's understanding that the OIG has referred S/LPD Director Otto Reich's name to the Department's personnel office for possible disciplinary action. To date, the office has not taken any action.

THE IRAN/CONTRA INVESTIGATION

For the duration of the Congressional investigation of the Iran/Contra affair, the Committee staff continued its investigation of the activities of S/LPD. In its review of the evidence, it became apparent to the Committee staff that S/LPD's activities were not coordinated within the State Department but by a high level interagency group established by the NSC. As the final report of the Congressional Committees investigating the Iran/Contra affair points out, Walt Raymond, the principal NSC staff officer in charge of monitoring S/LPD

"... was a former senior CIA official, with experience in covert operations, who had been detailed to the NSC staff for a year with Casey's approval, and who upon retirement from the CIA became a Special Assistant to the President with responsibility for public diplomacy affairs."

Once at the NSC, Raymond helped set up a system of inter-agency committees, including a working group on Central American Public Diplomacy. The NSC staff also succeeded in having Otto Reich named as the Director of the new Office of Public Diplomacy (S/LPD), which

reported directly to the NSC. Francis D. Gomez, former public affairs specialist at the State Department and USIA, was hired by S/LPD through a series of sole source, no-bid contracts to carry out a variety of the Reagan Administration policies in Central America. Gomez and his business partner, Richard Miller, former head of public affairs at AID, then formed International Business Communications (IBC), a public relations firm, which also received a number of State Department contracts.

Supported by the State Department and White House, Miller and Gomez became the outside managers of Carl Spitz Channell's fund-raising and lobbying activities. They also served as the managers of Central American political figures, defectors, Nicaraguan opposition leaders and Sandinista atrocity victims who were made available to the press, the Congress and private groups, to tell the story of the Contra cause. They facilitated the transfer of funds raised by Channell and others to Swiss and offshore bank accounts at the direction of Oliver North. They became the key link between the State Department and the Reagan White House with the private groups and individuals engaged in a myriad of endeavors aimed at influencing the Congress, the media and public opinion. They also became the main funnel for private U.S. money going to the Democratic resistance in Nicaragua.

What follows is a description of how an outside private network of individuals was established that, with the guidance of senior White House officials, provided financial and political support for the Contra cause. S/LPD, a relatively obscure office in the State Department, played a pivotal role in maintaining and nurturing this private network, which played a central role in the larger Iran-Contra affair. (All

information in the following section is taken from public sources and published declassified transcripts and records of the Iran-Contra Committees.)

S/LPD AND THE PRIVATE NETWORK

Walt Raymond, a senior career CIA official and propaganda expert, was approached by Donald Gregg, Chief of the Intelligence Directorate at the NSC, and informed that Gregg was recommending to CIA Director Casey and NSC Advisor William Clark that he be assigned to the NSC as Gregg's successor when Gregg departed to join the staff of Vice-President George Bush. Raymond discussed the transfer with Casey, Clark, and McParlane and received approval for his involvement in setting up the public diplomacy program along with his intelligence responsibilities. Accordingly, he was transferred from CIA headquarters to the NSC in June of 1982.

In the early part of 1983, documents obtained by the Select Committees, and later released in unclassified form, indicate that Walt Raymond, who had succeeded Gregg as the Director of the Intelligence Staff of the NSC, successfully recommended the establishment of an inter-governmental network to promote and manage a public diplomacy plan designed to create support for Reagan Administration policies at home and abroad. Their initial efforts were directed toward involving private groups and individuals in a campaign to influence American and European public opinion on Intermediate Nuclear Force (INF) deployment in Europe.

In the Spring of 1983, the network began to turn its attention toward beefing up the Administration's capacity to promote American support for the Democratic resistance in Nicaragua and the fledgling

democracy in El Salvador. This effort resulted in the creation of the Office of Public Diplomacy for Latin America and the Caribbean in the Department of State (S/LPD), headed by Otto Reich.

On May 25, 1983, Secretary of State George P. Shultz, in an effort to head off the creation of S/LPD, wrote a memorandum to the President asking for the establishment of "simple and straightforward management procedures." The memorandum to the President followed a discussion between the President and Shultz earlier in the day.

In the memo Shultz said:

" . . . Therefore, what we discussed was that you will look to me to carry out your policies. If those policies change, you will tell me. If I am not carrying them out effectively, you will hold me accountable. But we will set up a structure so that I can be your sole delegate with regard to carrying out your policies.

" . . . What this means is that there will be an Assistant Secretary acceptable to you (and you and I have agreed on Tony Motley) who will report to me and through me to you. We will use Dick Stone as our negotiator, who, in conjunction with Tony, will also report solely to me and through me to you. Similarly, there will be an inter-agency committee, but it will be a tool of management and not a decision-making body. I shall resolve any issues and report to you."

The President responded with a memorandum, which stated in part:

"Success in Central America will require the cooperative effort of several Departments and agencies. No single agency can do it alone nor should it. Still, it is sensible to look to you, as I do, as the lead Cabinet officer, charged with moving aggressively to

develop the options in coordination with Cap, Bill Casey and others and coming to me for decisions. I believe in Cabinet government. It works when the Cabinet officers work together. I look to you and Bill Clark to assure that happens."

Attached to the memo was a chart placing the NSC between the Secretary of State and the President for the management of Central American strategy. Shultz had not only lost the battle to prevent the establishment of the office, he also accepted the NSC-sponsored candidate to run the office, and accepted the fact that Reich would report directly to the NSC and not through the Assistant Secretary of State for Inter-American Affairs.

Almost simultaneously with the creation of S/LPD, Walter Raymond, Jr. was named to a new position as Special Assistant to the President and Director of International Communications at the NSC. From that time forward, S/LPD reported to Raymond and his working group on Central American Public Diplomacy at the NSC. The group was composed of representatives of USIA, the CIA and DOD, as well as various NSC staffers, including Oliver North. At least for several months after he assumed this position, Raymond also worked on intelligence matters at the NSC, including drafting a Presidential Finding for Covert Action in Nicaragua in mid-September.

Reich relied heavily on Raymond to secure personnel transfers from other government agencies to beef up the limited resources made available to S/LPD by the Department of State. The NSC also intervened on behalf of S/LPD with top management officials in the State Department to expand Reich's resources within the Department. Personnel made available to the new office included intelligence specialists from the

U.S. Air Force and the U.S. Army. On one occasion, five intelligence experts from the Army's 4th Psychological Operations Group at Fort Bragg, North Carolina, were assigned to work with Reich's fast-growing operation.

White House documents also indicate that CIA Director Casey had more than a passing interest in the Central American public diplomacy campaign. In an August 9, 1983 Memorandum entitled "Private Sector Support for Central American Program," Raymond told Clark:

"A group of public relations specialists met with Bill Casey a few days ago. Faith also met them. The group included Bill Greener, the public affairs head at Philip Morris, and two or three others. They 'stated' what needed to be done to generate a nationwide campaign. Several elements were identified. The first, a fund-raising effort under the direction of someone like Walter Wriston. Secondly, an effective communications system inside the Government. The overall purpose would be to sell a 'new product' — Central America — by generating interest across-the-spectrum."

In an August 29, 1983 memorandum from Raymond to Poindexter, Casey's continuing interest in the effort to influence public opinion was shown by the following reference:

"Bill Casey called on August 26 and would like to follow-up on his idea to have a meeting with five or six key public relations specialists. This is referred to in my earlier memorandum. I put him off until after Labor Day.

". . . When I philosophized a bit with Bill Casey (in an effort to get him out of the loop), he was negative about turning the ball over to State, but very positive about someone like Gil Robinson

working on the problem from within State."

Casey was obviously concerned that the establishment of S/LPD in the State Department might put it beyond NSC control. Casey's involvement in the public diplomacy effort apparently continued throughout the period under investigation by the Committees.

On March 20, 1985, Oliver North sent a memorandum to National Security Advisor Robert McFarlane on the subject, "Timing and the Nicaraguan Resistance Vote." Attached to the memo was a chronological event checklist which outlined efforts "aimed at securing Congressional approval for renewed support to the Nicaraguan Resistance Forces." Responsibility for the various efforts was tasked to a number of individuals in the NSC and Department of State as well as private supporters including former Congressman Dan Kuykendall and State Department contract consultant Frank Gomez. In the cover memo seeking a decision from Don Regan that would trigger some of the private group efforts, North wrote:

"You should also be aware that Director Casey has sent a personal note to Don Regan on the timing matter. We are attempting to obtain a copy for your use."

As late as August of 1986, Walt Raymond prepared a memorandum for Poindexter's signature to Bill Casey on the subject of Central American Public Diplomacy. The memo reported on a new structure in the State Department which moved LPD from the Secretary's Office to the Bureau of Inter-American Affairs. In the cover memo to Poindexter, Raymond indicated his desire to have Peter Dailey, who had been U.S. Ambassador to Ireland and had managed the public diplomacy initiative on INF deployment in Europe, "work closely with Bob Kagan, the Interagency

Central American Public Diplomacy coordinator, and to help coordinate private sector activities such as funding that currently cannot be done by either CIA or State."

On August 22, 1986, Casey responded to the Poindexter memo indicating that he (Casey) had just:

" . . . brought Pete Dailey on board as Counselor to the Director of Central Intelligence. As a CIA employee, naturally, Pete is subject to the legal prohibitions on us relating to activities intending to influence U.S. public opinion or policy. Any advisory role that he plays on the public diplomacy front must, of course, be in accordance with these legal restrictions.

"Similarly, now that Pete has joined us, he obviously can have no role in any private fund-raising effort on behalf of the Nicaraguan Resistance."

Curiously, the letter to Poindexter was apparently not sent to Poindexter but to Walt Raymond because, on August 29, 1986, Raymond forwarded the letter to Poindexter with a cover memo which said:

"Bill Casey has sent a brief note to you which puts some caveats around the activities Peter Dailey can undertake. Peter has talked to me, and I do not believe that this will cause him any difficulties in helping us along the lines of our previous exchanges via the PROFS system."

On August 26, 1986, Raymond sent a PROF note to Poindexter on the subject of "Central America Public Diplomacy." The PROF note said, in part:

"As a follow-up, Peter Dailey invited me to breakfast. I thought the memo was excellent but he did not feel that it totally filled

the bill. What he thought was missing was the immediacy of the problem from the American domestic perspective. He believes that we are operating with a relatively narrow window in which to turn around American perceptions re Contras — and particularly Nic — or we will be chewed up by Congress. We discussed the obvious, which is part of our strategy, including such things as: the need to convince people of the key importance of Contras to our national security; the need to glue white hats on our team, etc. The themes are those we have pressed although he believes we could change the dialogue away from Contras to democrats; emphasize the need for a free and open vote, etc. Nothing really new here. The key difference is that he thinks we should run it more like a political/presidential campaign. We need to strengthen our ability to reach out. Names like Rollins, Nofziger and co. were thrown around as the kinds of resources one needs to tap.

"Later, in talking to Ollie and Bob Kagan, we focussed on what is missing and that is a well-funded, independent outside group — remember the Committee for the Present Danger — that could mobilize people. Peter suggested 10 or 12 very prominent bipartisan Americans. Added to this would need to be a key action officer and a 501-c-3 tax-exempt structure. It is totally understanding that such a structure is needed and also totally understanding why, for discreet political reasons, it was not included in the memo to Bill Casey. I told Pete he was right but we need 'a horse' and money!"

As late as November 10, 1986, Raymond sent another PROF note to Poindexter on the subject of "Cent Am Private Sector Initiative," which stated:

"There have been several meetings following up on the effort to get a major, bipartisan group formed to help promote an 'educational' program in the U.S. which would help provide understanding (and support) for our Centam policy, particularly vis-a-vis Nicaragua.

"Although Pete Dailey, Bill Casey and Clif White have all been involved in general discussion of what needs to be done, we are going to have to be sure that Pete and Bill are not involved. Pete is getting very nervous on this item. Hence, Clif is now taking the lead. The current focus is to get a bipartisan co-chairmanship, a six man (roughly) EXCOM, a staff director and a large bipartisan advisory council. Current names being tossed around for the co-chair include Jack Gavin, Bill Rogers, Dean Rusk and Mark White. Pete (and Ollie) favor going with Gavin. Clif is also talking to several key democratic activist types for their recommendations. Jim Woolsey's name has come up in that context. Clif has the list of several effective operators who have just finished the fall campaign (plus some soon-to-be ex-staffers on the Hill) who might be a good EXDIR. Dave Miller has also been helpful, particularly in terms of getting the 501-c-3 status and access to fresh faces in the political consultant field. Clif has (or will) be seeking names from Mitch Daniels too.

"The problem with all of this is that to make it work it really has to be one step removed from our office and, as a result, we have to rely on others to get the job done. Will keep you posted."

From early 1983 until November of 1986, the NSC staff, with the backing of Bill Casey and support from National Security Advisors Bill

Clark, Bud McFarlane and John Poindexter, and with continuing help from Oliver North, created an inter-governmental structure the purposes and activities of which were masked from Congress and public view. The NSC and S/LPD, operating under the cover of the State Department, hired outside consultants and gave encouragement, support and direction to groups of private citizens outside the government. These groups raised money for Contra weapons, lobbied the Congress, ran sophisticated media campaigns in targeted Congressional districts, and worked with S/LPD to influence American public opinion through manipulation of the American press. In the latter half of 1986, Raymond was attempting to set up a private group with more prestige and greater clout than the Rich Miller/Spitz Channell network that had been quickly assembled and utilized to work on the 1986 Contra aid vote in the Congress.

While donations from other countries and profits from the Iran arms sales provided most of the money for lethal assistance to the Contras after the Boland Amendment, a network of private foundations and organizations, including those associated with Carl R. "Spitz" Channell and Richard R. Miller, also played an essential role. Channell's principal organization, the tax-exempt National Endowment for the Preservation of Liberty (NEPL), used White House briefings and private meetings with the President to raise more than \$10,000,000 from private contributors, almost all for the Contra cause. Over half of this total came from two elderly widows -- Barbara Newington and Ellen Garwood -- who made the bulk of their contributions after receiving private and emotional presentations by Oliver North on the Contras' cause and military needs. One dozen contributors accounted for ninety percent of NEPL's funds in 1985 and 1986.

Richard Miller's principal organization, International Business Communication (IBC), was a partnership between Miller and Frank Gomez, which began to work on behalf of the Contras under a State Department contract that began in early 1984. From early 1984 until the Summer of 1985, IBC's principal source of income was derived from a series of State Department sole-source, no-bid contracts pushed through the bureaucracy by the principal officials of S/LPD.

The first State Department contract for IBC began in February 1984, shortly after S/LPD had begun its work. Miller and Gomez were introduced to Oliver North in mid-1984 by State Department officials from S/LPD. From that period forward, Miller and Gomez worked closely with North as well as the Office of Public Diplomacy in carrying out a variety of assignments related to the promotion of the Contra cause.

In the Spring of 1985, White House Deputy Political Director John Roberts sent Spitz Channell and his Deputy, Dan Conrad, to meet with Miller and Gomez, who, Roberts believed, could best advise them how to utilize their fund-raising services on behalf of the Contra cause. Roberts was so confident in IBC's connections to the Administration that he described it as the "White House outside the White House." Miller and Gomez assisted Channell in his fund-raising efforts and advised Channell on the disbursement of the proceeds for various projects including lobbying, television ads, newspaper ads and grassroots activities designed to influence Congressional votes on aid to the Contras.

Congressman Mike Barnes, whose Congressional district adjoins Washington, D.C. and who was Chairman of the House Foreign Affairs Subcommittee on Western Hemisphere Affairs, was a special recipient of

television ads financed by Channell. Heavy television advertising was directed against Barnes even though the sponsors knew that there was no chance they could change his mind or his vote. They felt, however, that since these ads were scheduled to run in the Washington media market, they would be seen by all Members of Congress and serve as a warning. The Washington television campaign was supplemented by ad campaigns in selectively targeted Congressional districts. The entire effort, although paid for by Spitz Channell and his contributors, was actually managed by Rich Miller and others, including Dan Kuykendall and Penn Kemble.

Of the \$10,000,000 that was raised, nearly two million dollars was spent for public relations, political advertising and lobbying. Much of the rest was retained by Miller and Channell for salaries, fees and expenses incurred by their organizations. The NEPL money that was spent for direct and indirect assistance to the Contras was disbursed, primarily by Miller, at the direction of North. Approximately \$1.7 million was "washed" by Channell through Miller's domestic and Cayman Island entities — International Business Communications (IBC) and I.C., Inc. — to the Enterprise, where it was commingled with funds from third country contributions and the Iranian arms sale. Another one million dollars was passed at the direction of North through Miller's entities to accounts controlled by Adolfo Calero. Approximately \$500,000 was distributed at North's request to other persons and entities engaged in activities relating to the Contras, including Rob Owen, Dan Kuykendall, Thomas Dowling, the Washington UNO Office and some unidentified entities.

Friends of the Democratic Center in Central America (PRODEMCA),

which concentrated on Central American issues, was another organization that had close financial and personal ties to Channell and Miller. Penn Kemble, the President of PRODEMCA, was involved in a broad array of activities related to Spitz Channell's Central American Freedom Program and the Reagan Administration's efforts on behalf of the Contras. Kemble initially recommended to Miller and Gomez that Bruce Cameron be hired as a lobbyist for PRODEMCA. The relationship, however, was eventually accomplished by Kemble and Cameron taking over Rob Owens' organization, the Institute for Democracy and Education in America (IDEA), changing its name to Center for Democracy in the Americas (CDA), and readjusting the board of directors to include Kemble as Chairman and Cameron as President.

Kemble was also one of the principals in the Institute for Religion and Democracy, which worked with Otto Reich's S/LPD office in the State Department and received some minimal funds from IBC. At the PRODEMCA offices, Kemble hosted legislative strategy sessions, in at least one of which State Department official Robert Kagan was a participant, prior to the 1986 Congressional votes on Contra aid.

In the summer of 1985, Oliver North, with the assistance of Richard Miller and Frank Gomez, enlisted the services of Roy Godson and the Heritage Foundation in his successful effort to transfer money indirectly to Miller's Cayman Island bank account. North initially asked Roy Godson, a consultant to the NSC, a member of the President's Foreign Intelligence Advisory Board, and the Director of the Washington Office of the National Strategy Information Center (an organization founded by William Casey and with extensive ties to the intelligence community), to raise money to be spent in Nicaragua. Godson later met

with Miller, who suggested two alternative routes for contributions: donations to the Institute for North-South Issues (INSI), a tax-exempt organization controlled by Miller's partner, Frank Gomez; or money transfers directly to Miller's Cayman Islands bank account.

Godson turned for assistance to Clyde Slease of Pittsburgh, counsel to Richard Mellon Scaife and several Mellon family foundations. At the request of Slease, Godson arranged for a meeting with North and Robert McFarlane in the Situation Room of the White House. Slease agreed to try to raise \$400,000 for North's project. Slease then persuaded an acquaintance in Pittsburgh, John Donahue, to donate \$100,000, and they settled on designating the Heritage Foundation as the recipient of the donation.

A September 12, 1985 letter from Richard Miller to Edwin Fuelner, Director of the Heritage Foundation, indicates that Donahue's \$100,000 grant to the Heritage Foundation was then awarded to INSI in the form of a grant for, according to Miller's letter, "the purpose of disseminating in Central America materials designed to educate the public on U.S. policy objectives." No such materials, however, were ever produced by INSI. Instead, Miller instructed INSI, after Heritage awarded it the \$100,000, to transfer \$80,000 of the grant to his Cayman Islands account from which funds were withdrawn as directed by North. INSI retained a twenty percent administrative fee for its distribution of the grant, which, according to Miller, was the standard fee North had recommended him to take. Donahue was never informed that INSI would be the recipient of his grant nor that the money would eventually find its way into Miller's Cayman Island account or North's Lake Resources account.

The grant to INSI via Heritage is one example of the elaborate

efforts Channell and Miller made to conceal the nature of their fund-raising activities and North's role. Certain funds received by NEPL for Contra assistance were allocated on Channell's books to a project denominated "Toys," a euphemism for weapons. NEPL and IBC employees were instructed to refer to North by a code name, "Green." Funds were transferred to the Contras, not directly—which would be traceable—but through Miller's anonymous offshore entity, I.C., Inc.

North misrepresented to several White House officials the nature of the network's fund-raising activities. For instance, the President apparently was led to believe that the funds were being raised for political advertising; the President's Chief of Staff, Donald Regan, was deliberately kept in the dark by North and Poindexter; and North misrepresented to Congress and White House personnel the nature of his involvement in the activities of NEPL and IBC. As a result, the Miller/Channell network was able to operate successfully until the latter part of 1986, when increased government aid to the Contras and public disclosure of both the Iranian arms sales and the Contra resupply network made further assistance efforts unnecessary and unwise.

By using a tax-exempt organization to funnel money to the Contras—for arms and other purposes—Channell and Miller provided tax deductions to donors. As a result, the United States Government effectively subsidized a portion of the contributions intended for lethal aid to the Contras. In the Spring of 1987, Channell and Miller pled guilty to criminal tax charges of conspiring to defraud "the United States Treasury of revenues to which it was entitled by subverting and corrupting the lawful purpose of NEPL by using NEPL...to solicit contributions to purchase military and other non-humanitarian aid for

the Contras." At his plea hearing, Channell identified Miller and North as his coconspirators.

CONCLUSIONS

This report, as well as the documents and testimony upon which it is based, indicates that senior CIA officials with backgrounds in covert operations, as well as military intelligence and psychological operations specialists from the Department of Defense, were deeply involved in establishing and participating in a domestic political and propaganda operation run through an obscure bureau in the Department of State which reported directly to the National Security Council rather than through the normal State Department channels.

The NSC working group on Central American Public Diplomacy was run by a former senior CIA propaganda specialist and included representatives of the CIA, the Department of Defense and the USIA as well as various NSC staff, including Oliver North. Former CIA Director William Casey approved of the operation and was kept informed of its activities throughout its existence. Donald Gregg, a former high-ranking CIA official who is presently the National Security Advisor to Vice President Bush, initiated the recommendation which led to the assignment of the senior CIA covert operative to the NSC. That official, Walter Raymond, Jr., was responsible for the establishment of the S/LPD mechanism at the State Department, even over the objections and resistance of Secretary of State George Shultz. Raymond also ran the Central American Working Group on Public Diplomacy at the NSC to which S/LPD reported. He was instrumental in facilitating the assignment of intelligence personnel from the Department of Defense to

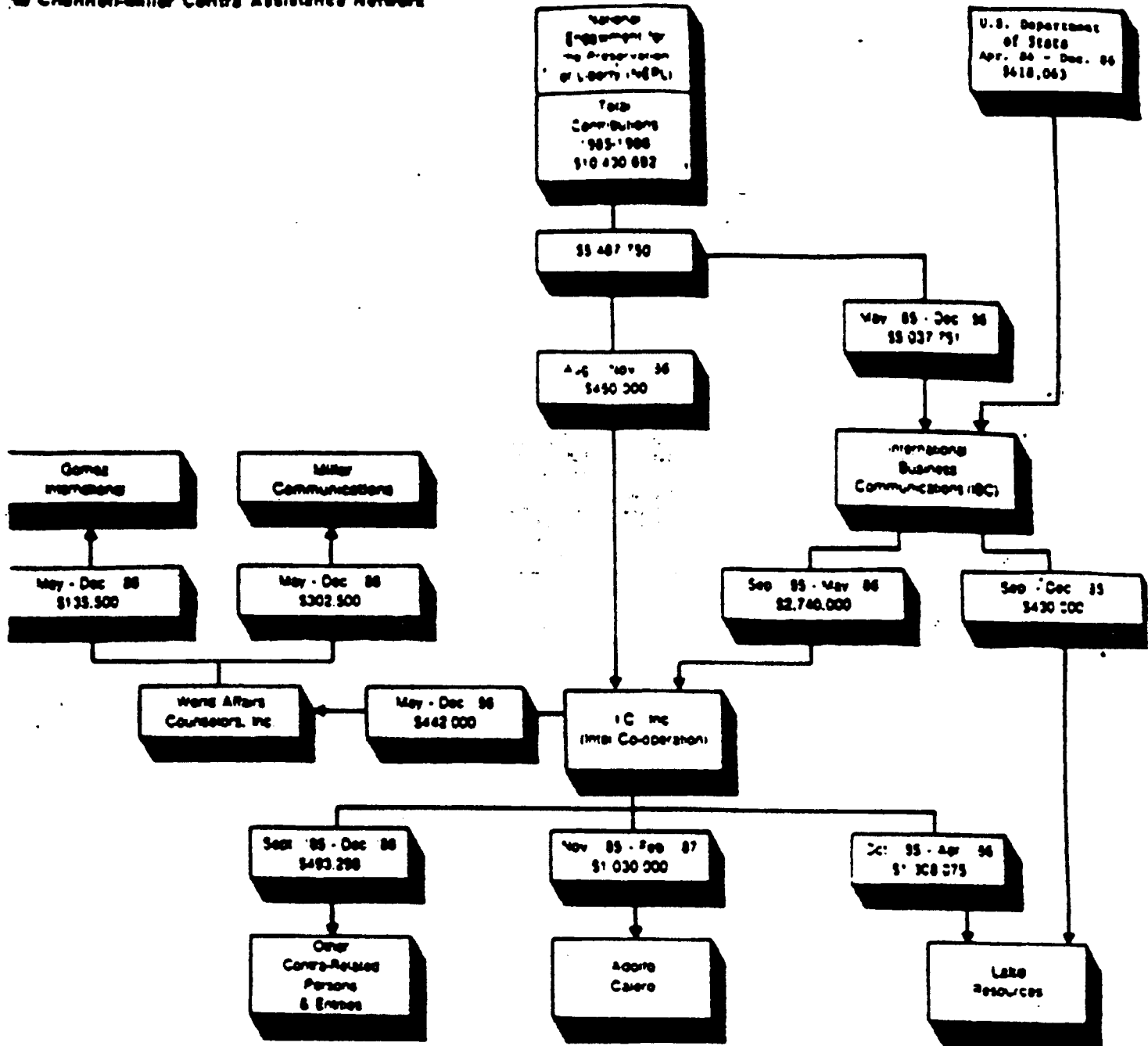
S/LPD and the expansion of State Department resources available to S/LPD despite objections to, and initial denials of, such requests by senior officials at the Departments of Defense and State. Through irregular sole-source, no-bid contracts, S/LPD established and sustained a private network of individuals and organizations whose activities were coordinated with, and sometimes directed by, Col. Oliver North as well as officials of the NSC and S/LPD. These private individuals and organizations raised and spent funds for the purpose of influencing Congressional votes and U.S. domestic news media. This network raised and funneled money to off-shore bank accounts in the Cayman Islands or to the secret Lake Resources bank account in Switzerland for disbursement at the direction of Oliver North.

Almost all of these activities were hidden from public view and many of the key individuals involved were never questioned or interviewed by the Iran/Contra Committees. Relevant documents discovered in S/LPD's files by the GAO were never provided to the Iran/Contra Committees nor the Foreign Affairs Committee despite repeated requests. The State Department Office of Personnel has, for over a year, refused to act on a recommendation by the State Department Inspector General that the former head of S/LPD be subjected to disciplinary action. A recommendation to the Inspector General of USIA that certain matters related to these activities be investigated has apparently been ignored or inexplicably delayed. Key officials of the NSC and S/LPD, who were responsible for many of these improper activities, have been promoted or transferred to senior positions in the U.S. Government.

A subsequent investigation may be necessary to determine the extent to which the Department of State was used, and perhaps compromised, by

the CIA and the NSC to establish, sustain and manage a domestic covert operation designed to lobby the Congress, manipulate the media and influence domestic public opinion.

Channel-Miller Contra Assistance Network



LFE H HAMILTON, INDIANA
GUS YATRON, PENNSYLVANIA
STEPHEN J. SOLARZ, NEW YORK
DON BOYKER, WASHINGTON
GERRY E. STUDDS, MASSACHUSETTS
DAN NICA, FLORIDA
HOWARD WOLPE, MICHIGAN
GEO. W. CROCKETT, JR., MICHIGAN
SAM GEJDENSON, CONNECTICUT
MERVYN M. DYMALLY, CALIFORNIA
TOM LANTOS, CALIFORNIA
PETER H. KOSTMAYER, PENNSYLVANIA
ROBERT G. TORRICELLI, NEW JERSEY
LAWRENCE J. SMITH, FLORIDA
HOWARD L. BERMAN, CALIFORNIA
MEL LEVINE, CALIFORNIA
EDWARD F. FEIGHAN, OHIO
TED WEISS, NEW YORK
GARY L. ACKERMAN, NEW YORK
MORRIS K. UOALL, ARIZONA
CHESTER G. ATKINS, MASSACHUSETTS
JAMES MCCLURE CLARKE, NORTH CAROLINA
JAMES B. FUSTER, PUERTO RICO
JAMES M. BILBRAY, NEVADA
WAYNE OWENS, UTAH
FOFO I.F. SUNIA, AMERICAN SAMOA

JOHN J. BRADY, JR.
CHIEF OF STAFF

One Hundredth Congress
Congress of the United States
Committee on Foreign Affairs
House of Representatives
Washington, DC 20515

WILLIAM S. BROOMFIELD, MICHIGAN
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ROBERT K. DORNAN, CALIFORNIA
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CONNIE MACK, FLORIDA
MICHAEL DEWINE, OHIO
DAN BURTON, INDIANA
JAN MEYERS, KANSAS
JOHN MILLER, WASHINGTON
DONALD E. "BUZ" LUKENS, OHIO
BEN BLAZ, GUAM

STEVEN K. BERRY
MINORITY CHIEF OF STAFF

March 18, 1987

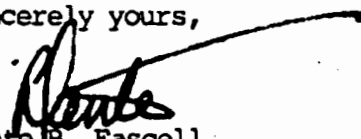
Dear Colleague:

Attached is a copy of a preliminary report prepared by the Committee staff, which has been reviewing the State Department consulting contracts with International Business Communications (IBC) and one of its principals, Frank Gomez.

Because of the difficulty the Committee staff has encountered in its efforts to obtain relevant information from the State Department, and because IBC has apparently been involved in the funneling of money to secret Swiss bank accounts, I am forwarding this report, along with all of the relevant documents, to the House Select Committee to Investigate Covert Arms Transactions with Iran.

Although the Committee will continue to seek information on IBC and related companies in its oversight capacity, it is becoming increasingly apparent that the Select Committee may have to use its subpoena powers to obtain the full story.

Sincerely yours,


Dante B. Fascell,
Chairman

DBF:BHddn

Committee on Foreign Affairs

MEMORANDUM

TO: Dante B. Fascell, Chairman

DATE: March 18, 1987

FM: Committee Staff

RE: State Department's Award of Contracts to Frank Gomez and
International Business Communications

Attached is a preliminary report of the Committee staff's investigation of the circumstances surrounding the award of six contracts by the State Department's Office of Latin America Public Diplomacy to International Business Communications (IBC) and its principal, Frank Gomez.

As noted in the attached report, the staff encountered a number of problems in its attempt to obtain all of the relevant documents in a timely fashion. Information and documents initially given to the Committee were incomplete and failed to provide a continuous flow of events. Additional information and documents were provided to the Committee staff at the State Department under restrictive conditions.

After its review of all contracts and files, the staff is of the opinion that the information provided by the Department raises many more questions than it answers. Given this fact, the staff wishes to emphasize that the attached document is a preliminary, not a final, report.

While the State Department contracts and the files contain additional information on, for example, the circumstances surrounding the classification of the \$276,000 contract, IBC's direct mail efforts, and some of the reasons why the Department formally entered into a contractual relation with IBC eleven months after the contract period commenced, these documents are still completely lacking in terms of answering a number of key questions. For example:

— Why was a non-competitive \$276,000 State Department contract with IBC classified as secret during the same time period that IBC was engaged in transferring monies to Lake Resources, an account controlled by Oliver North for the purpose of aiding the Contras?

— Were any of the State Department contract monies in fact used by IBC to illegally lobby Members of Congress?

— Were State Department monies illegally diverted to aid the Contras?

The Committee staff is of the opinion that these pressing questions can only be properly reviewed by the Select Committee to Investigate Covert Arms Transactions with Iran. With your concurrence, the staff recommends that all documents in the Committee's possession be forwarded to Chairman Hamilton and the Select Committee staff.

This report was compiled by Bert Hammond, Vic Zangla, and Spencer Oliver.

PRELIMINARY REPORT

MEMORANDUM

TO: Members, House of Representatives Committee
on Foreign Affairs

FM: Foreign Affairs Committee Staff

RE: Preliminary Review of Department of State Contracts with
International Business Communications, Inc.,

News articles on February 7, 1987, saying that the State Department awarded a secret contract for \$276,186 last year to a public relations firm that reportedly worked with Lt. Col. Oliver L. North, sparked immediate Committee inquiries to the Department of State. In a letter dated February 9, 1987, Chairman Fascell and Chairman Hamilton requested the Secretary of State to provide information on this contract and any similar ones.

An on-the-record meeting was held on February 10, 1987, between Committee staff and State Department officials. The meeting produced little, if any, substantive and definitive information, e.g. on the reason for the contract; the rationale for giving it a secret classification; its propriety in terms of

spending taxpayer money for publicity and propaganda purposes; its award and signing on September 2, 1986 — some eleven months after its effective date of October 1, 1985; its relationship, if any, to payments for pro-Contra TV ads; and the possible use of government contract payments to lobby Members of Congress.

Information and documents initially given to the Committee were incomplete and failed to provide a continuous flow of events. Additional information and documents from contract files and the office of Public Diplomacy files were made available to Committee staff at the State Department under closely supervised and restrictive conditions. This information likewise was incomplete. For example, the State Department initially identified two contracts with IBC. It now appears that there were at least six contracts with IBC or its principals (see following listing and appendix).

Despite strenuous efforts by the Committee and its staff to obtain documents and information related to the contracts with IBC, its principals, and other similar contractors the Department of State has continued to raise barriers to Committee access to State Department files. Committee staff requested contract information and answers to a number of specific questions at the on-the-record meeting with State Department officials on February 10, 1987. This information has not been provided. At a hearing shortly thereafter, Chairman Fascell asked the Secretary of State about the delays and unresponsiveness of his Department. The Secretary said it was not their intention to deny information to proper oversight investigations. However, the State Department continued to stall — even after subsequent phone calls and attempts to expedite the responses. Chairman Fascell again wrote to the State

Department and other agencies on March 5, 1987, requesting important information on agency contracting — again without response.

The Committee is particularly concerned about the role played by the State Department's Legal Advisor and his staff throughout its investigation. It appears that all requests by the Committee for information from the State Department must go through the Legal Advisor's staff. The Legal Advisor's staff has continued to raise questions about every request, to examine all documents before turning them over to the Committee, and to monitor and control the Committee's access to documents and other information. It is as though the Legal Advisor is acting as a defense lawyer in a criminal investigation. As a result, the Committee has obtained only a small portion of the documents requested and has been required to jump through all kinds of unnecessary hoops just to acquire information that should routinely be provided in its oversight capacity. This gives rise to a question of what the Legal Advisor's office is doing in this investigation? Why are they involved? Who are they reporting to? Who is instructing them to apparently frustrate the Committee's efforts to oversee the activities of the Department of State?

Although access has been extremely limited, the following comments and observations are based on a preliminary examination of documents and other information made available to the committee.

CONTRACTS

Committee staff has identified the following six contracts between Frank Gomez/IBC and the Department of State. All contracts were sole

source.

<u>PERFORMANCE PERIOD</u>	<u>AMOUNT</u>	<u>P.O. #</u>	<u>RECIPIENT</u>
2/14/84 - 5/31/84	\$ 9,500	1001-402214	Frank Gomez
5/1/84 - 7/31/84	9,500	1001-402296	Frank Gomez
7/31/84 - 9/1/84 (extension of above contract)	9,800	1001-402296-A	Frank Gomez
10/1/84 - 12/31/84	24,400	1001-502074	IBC
3/1/85 - 9/30/85	90,000	1001-502160	IBC
10/1/85 - 9/30/86	276,186	1001-602066	IBC

In addition to these contracts, Francis Gomez, in a letter dated 2/29/84 to Matthew Friedman (DOS/Office of Public Diplomacy), requested payment on an additional contract (P.O. #1101-402220, \$9,500 total amount). In a letter dated 9/30/83, Francis Gomez, who was employed as the Director of the Foreign Press Center at USIA, indicated that he would leave the employ of USIA on 2/14/84. Staff made a request for a copy of this contract but has not yet received it. Questions include whether the period of performance for this contract overlapped with other contract work for LPD performed by Frank Gomez, and whether Mr. Gomez had terminated his employment with USIA before

undertaking work for the Department of State.

OTHER LPD CONTRACTS

Apparently, State's Office of Public Diplomacy for Latin America and the Caribbean (LPD) contracted for public diplomacy and public relations with IBC as well as others. Mark Richards Associates, Inc., seems to have had at least 3 contracts with LPD valued at approximately \$126,000. Also, a number of individuals were contracted to write one or more papers reportedly used in connection with LPD published materials. Of particular interest in this regard is a contract to Mr. Arturo Cruz, Jr. in FY 1985 for \$6,300. Mr. Cruz, Jr. is the son of Arturo Cruz, a director of the United Nicaraguan Opposition (UNO), who recently resigned.

One of the questions that arises here is the extent to which these contracts with LPD were for the same or similar type work performed by IBC during the same time periods; and if so, why the contracts were not open to competitive bidding. The Committee requested these contracts and other possible contracts on March 5, 1987, and has not yet received them.

PAYMENTS TO IBC

IBC made frequent requests to State for payments, sometimes prepayments, for services rendered under several contracts in 1984 and 1985. For example, on 4/11/85, IBC, citing cash flow problems, urgently requested an early payment on the first installment of an existing \$90,000 contract that covered services through September, 1985. IBC continued to perform services for LPD, apparently

without interruptions and without a signed contract, from October, 1985, to September, 1986. There is no evidence in the documents made available to the Committee that IBC requested any payment for these services during this 11-month period until September 16, 1986, when an invoice was submitted for \$216,381.16 for services rendered from October 1, 1985 through August 31, 1986. A final invoice covering the month of September 1986, for \$25,670 was submitted on October 31, 1986. (Total cost \$242,051.16).

Although documents examined — including proposals, projected costs, requests for a fixed-priced contract, and reports of services rendered — date back to September, 1985, the actual contract was not signed and executed until September 2, 1986, in the amount of \$276,186. This series of events gives rise to a number of questions: for example, how and why IBC funded its operating costs over such a prolonged period of time without written assurance that it would get a contract and be reimbursed for services rendered; why it took so long to execute a contract ostensibly for services similar to ones that IBC had performed for State/LPD under prior contracts; why the contract eventually executed was classified secret; why the contract was not competed; and whether or not services performed by IBC in the area of public diplomacy and development and distribution of information on Central America were appropriate and consistent with existing legislation.

Perhaps, the article in the Washington Post on March 7, 1987, may explain to some extent why IBC was apparently not pressed for money during the contract performance period. Based on information contained in an internal IBC memorandum, the article identifies IBC as a conduit for some \$4.93 million received from the National Endowment for the Preservation of Liberty (NEPL)

during May 1985, through December 1986. NEPL is an organization apparently controlled by Carl (Spitz) Channell. Reportedly, \$1.74 million of this money was transferred by IBC to Lake Resources, Inc., an organization allegedly controlled by Lt. Col. Oliver North. The article notes that IBC collected "professional fees" of \$1.28 million and spent another \$493,000 on "program expenses."

OVERHEAD

The overhead charges included in the \$276,000 IBC contract amount to \$128,727, or 50% of the total contract, excluding the fixed fee of \$16,442. On the surface, these charges appear to be excessive and inconsistent. For example, the facility cost base used by IBC and accepted by the State Department included \$110,000 for rent, \$25,142 for real estate taxes and depreciation, and \$17,895 for utilities and maintenance. Questions arise because the facility cost base includes large rental fees along with costs (taxes, depreciation, and maintenance) generally associated with ownership of real property. The principal place of business, 1912 Sunderland Place, N.W. is a small 3 level office building with approximately 900 square feet of office space on each level. The building in which IBC is located also houses a number of other professional tenants. The contract called for places of performance at the State Department; 1912 Sunderland Place, N.W.; and 1523 New Hampshire Ave., N.W., both in Washington, D.C.

MAILING LIST

IBC was asked by LPD in October 1985, to assume responsibilities for

distributing public diplomacy materials and developing an improved, computerized mailing list. Starting with a listing containing about 500 names — mostly press, U.S. government, and support groups — IBC developed a computerized data base of some 3300 names. This current listing includes Members of Congress, key House and Senate staff members, U.S. government officials, the media, religious organizations, state and local government officials, political organizations, academicians, educational associations, business, labor and research organizations, public interest groups, and private individuals. The complete mailing list has not yet been made available to the Committee.

Some preliminary observations about the mailing list: (1) it appears to consist largely of groups, organizations and individuals in positions to directly or indirectly influence, debate and/or publicly support official U.S. policy and activity in Latin America and the Caribbean; (2) the number of private individuals on the list is probably small; (3) the existing database is structured and coded so as to allow sorting, selection and grouping of names in any number of different categories, which in turn, would allow specific targeting of public diplomacy efforts; (4) the database system is relational, i.e., it can manipulate data for statistical and demographic purposes; thus it seems to have the capability of comparing and analyzing information to determine when and where diplomacy efforts are successful or need to be enhanced.

We found no evidence that Members of Congress and their staffs knew or were aware that the State Department was paying one or more outside contractors to conduct "public diplomacy" aimed at influencing the Congress.

The limited information made available to us indicates problems and supports questions in a number of areas: (1) whether groups or individuals were deliberately targeted by State/IBC in developing the mailing list and developing and distributing information, (2) the extent to which the material mailed out was objective and factual or designed to influence legislation, (3) whether State/IBC complied with mail statute 39 USC 3204 that prohibits U.S. government officials from mailing materials without prior requests, except to educational institutions, public libraries or Federal, State and other public authorities, (4) if State/IBC public diplomacy efforts were inconsistent or contrary to legislative and other prohibitions regarding lobbying and (5) whether State is complying with the requirement to inquire periodically if an individual or organization wants to remain on the mailing list.

CLASSIFICATION OF CONTRACT

Press reports allege that the State Department classified the \$276,000 contract in order to protect Sandinista defectors that IBC was responsible for under the terms of the contract. In a discussion between committee staff and DOS officials (2/10/87), State representatives indicated that the contract had been classified not for security reasons but to guard business confidentiality.

In an internal State Department memorandum dated 2/24/86, John Blacken (S/LPD) said that "the services provided by the contract are such that publication of the general nature of the performance would be detrimental to ongoing programs under S/LPD. Firstly, release of the general nature of the

contract could allow elements unfriendly to the U.S. to deduce sensitive interagency operations of S/LPD, the secrecy of which is fundamental to their success. Revelation of certain operations or allowing speculation could result in serious damage to our relations with several allies and other sovereign states."

In another memorandum dated 2/29/86, Thomas F. Calhoun (S/LPD) informed Barbara Garland, Acting Chief of the Contracts Division, that the entire contract with IBC would be classified secret. Calhoun indicated that the citations justifying the classification of the \$276,000 IBC contract are Federal Acquisition Regulations (FAR) 6.302-6 for national security consideration and FAR 5.202 for unusual and compelling reasons.

FAR 5.202 states that the contracting officer need not submit the notice required by FAR 5.201 (which requires agencies to furnish for publication in the Commerce Business Daily (CBD) notice of proposed contracts to exceed \$10,000) when the contracting officer determines that publication of the synopsis of the contract in CBD would compromise the national security (e.g., would result in disclosure of classified information). Sec. 5.202(1) also states that "The fact that a proposed solicitation or contract action contains classified information, or that access to classified matters may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception to synopsis."

Section 6.302-6 of the FAR states that full and open competition for the award of the contract "need not be provided for when the disclosure of the agency's needs would compromise the national security." Section 6.302-6 also

states that national security justifications for classifying a contract shall not be used merely because the acquisition is classified, or merely because access to classified matters will be necessary to submit a proposal or perform a contract.

The October 1, 1985, through September 30, 1986, DOS contract with IBC provided for the handling of Nicaraguan political defectors during their stay in the U.S. and for translation services associated with debriefing the defectors. In addition, IBC would provide DOS with direct mail services.

With respect to the secret classification of the IBC contract, a number of questions remain:

— How would the disclosure of a contract to host Nicaraguan exiles in the U.S. have compromised national security?

— How would the IBC contract in question have compromised the Office of Public Diplomacy had it been disclosed publicly?

— How would public disclosure of the contract have compromised U.S. relations with its allies and other sovereign states?

— How would the business practices of IBC have been compromised if the contents of the contract had been disclosed to the public?

— Were national security considerations the real reason for classifying the contract?

IBC SECURITY CLEARANCE

Department of State records indicate that due to the classification of the IBC contract for \$276,000, a formal written award of the contract could not be made until IBC obtained a secret facility clearance.

On March 18, 1986, Defense Investigative Service (DIS) responded to the State Department to indicate that IBC was a partnership (namely, Miller Communications, Inc. and Gomez International, Inc.) and that both individuals (Gomez and Miller) wished to have their facility clearance processed as an individual facility partnership. Both Miller and Gomez were advised by DIS that additional documentation would have to be processed for such a clearance. Neither entity responded to the DIS request for additional information.

On April 17, the State Department forwarded a second request for clearance to DIS. On May 6, DIS responded to State to indicate that the office "had made repeated attempts to contact Mr. Frank Gomez, all to no avail."

On May 14, a third request for a secret facility clearance was forwarded to DIS. On June 3, DIS responded to State that after "repeated and explicit requests that the partnership furnish the information requested to place IBC in process for a clearance," Gomez and Miller had not answered DIS inquiries. DIS again discontinued processing IBC for a facility clearance.

In a June 12 memo, Barbara Garland (Contracts Branch) noted IBC's repeated failure to respond to DIS inquiries. She recommended that "the requirements

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office should be put on notice that IBC is to perform no further services nor incur further costs until the situation is resolved."

In a June 17 memo to Robert Kagan (Director, Office of Public Diplomacy) Robert Dickson of the Procurement Division warned that unless Kagan's office took immediate action to ensure that IBC complied with DIS requests, the Office of Public Diplomacy "would be faced with a situation where services are being performed not only absent a contract but where there is no adequate assurance that the contractor is following security procedures for an effort that is clearly sensitive in nature. Should this effort fail, there is no means to assure that the services are being performed in accordance with S/LPD's requirements and no contractual instrument will exist by which the contractor may be paid for its services."

On July 30, DIS granted IBC an Interim Secret facility clearance.

On November 17, after the expiration of the contract, DIS granted IBC a secret facility clearance but without the capability to safeguard classified material. The IBC facility that was granted a clearance is located at 1912 Sunderland Place, N.W., Washington, D. C. 20036. It should be noted that the contract also permits the contractor to perform services at 1523 New Hampshire Ave., N.W., Washington, D.C. 20036. This facility, however, was not granted a security clearance.

This series of events raises many questions such as:

— Why weren't IBC's principals, Richard Miller and Frank Gomez, more

responsive to Defense Investigative Service's inquiries?

— What classified services did IBC provide State in the ten month period before it received its interim security clearance on 7/30/86? At which location were these classified services performed?

— Were the classified services that IBC provided to State before receiving its interim security clearance in violation of security clearance provisions?

— Is it normal practice to approve a classified contract and continue to request that classified services be provided by the contractor before proper clearances have been granted to the contractor?

— How could the Office of Public Diplomacy be assured that IBC was executing its contractual obligations in accordance with State Department requirements when IBC had failed on numerous occasions to obtain the proper security clearances?

— Was it within government and State Department procedures and guidelines to formally enter into a classified contract with IBC, albeit a year after the beginning of the contract period, before a final secret clearance had been granted by DIS? (final secret clearance granted by DIS Nov. 17, 1986.)

— How widespread a habit does the State Department make of requesting services from an outside firm before it enters into a formal contractual relationship with the firm?

— Why didn't Mr. Kagan and the staff of the Office of Public Diplomacy respond to warnings in a June 17 memo from the Procurement Division which noted that without a contract, (1) the contractor was working at his own risk; (2) a situation existed whereby services were being performed not only absent a contract but that there was not adequate assurance that the contractor was following security procedures; and (3) no contractual instrument existed at the time by which the contractor could be paid for its services?

— What was the purpose of classifying the contract when in fact the contractor provided services to the State Department without having obtained a facility security clearance for the first ten months of the 12-month contract period?

LEGITIMACY OF IBC CONTRACT

Staff notes that the legitimacy of the \$276,000 IBC contract was raised by Barbara Garland, Contracts Division. In a January 8, 1986, memorandum to Barbara Garland, Dennis Gallagher of the Office of Assistant Legal Advisor, addressed her concerns.

Specifically, Gallagher referred in his memorandum to OMB Circular No. A-76, which states that the U.S. Government may rely on commercially available services to provide commercial products and services for government use. Certain functions, however, which are intimately related to the public interest, and which require policy making and decision making activity (for example, criminal investigations, national defense, regulation of industry and commerce) may only be provided by the government. The IBC contract in

question, according to Gallagher, consists primarily of liaison and information dissemination in connection with Department public relations, press relations, and congressional relations efforts. OMB Circular A-76 lists advertising and public relations services among the management support services listed as commercial activities. Using OMB's guidelines, Gallagher believes IBC's activities, as outlined in the IBC contract in question, are not inherently governmental, do not involve policy making and decision making activities, and are therefore legitimate.

Gallagher also notes: "Department of State expenditures for public relations are generally limited by a standard provision in our annual appropriation acts providing that appropriations may not be used for publicity and propaganda purposes not authorized by Congress. Since S/LDPs public information program has been presented to Congress by the Department, this provision does not apply to prohibit the proposal contract."

It should be noted, however, that the Committee has not found any evidence that Congress was ever informed that the State Department's Office of Latin American Public Diplomacy would enter into secret contractual arrangements which might violate prohibitions against lobbying and disseminating government information for publicity and propaganda purposes.

APPENDIX

GOMEZ/IBC CONTRACTS WITH DEPARTMENT OF STATE

CONTRACT NUMBER: 1001-402214

CONTRACTOR: Frank Gomez
6564 Williamsburg Blvd.
Arlington, VA. 22213

AGENCY: Department of State -- Office of Public
Diplomacy

AMOUNT: \$9,500.00

TYPE: Fixed/Sole Source

CONTRACT PERIOD: 2/14/84 - 5/31/84

DATE EXECUTED: 2/24/84

INITIATED BY: Jonathan Miller, Acting Director, Office of
Public Diplomacy

SIGNED BY: Simon Canady, 2/27/84 -- contracts office;
approved by: Jonathan Miller, 2/27/84;
Frances Gomez, 2/28/84

(Note: This contract was amended to include payment for travel expenses to Central America incurred by Mr. Gomez in connection with fulfilling the terms of the contract.)

PURPOSE: 1) Research, write and assemble information
kits on U.S. policy in Central America for
use by persons speaking on behalf of
Administration policy in the region.

II.

CONTRACT NUMBER: 1001-402296

CONTRACTOR: Francis Gomez
6564 Williamsburg Blvd.
Arlington, VA. 22213

AGENCY: Department of State - Office of Public
Diplomacy

AMOUNT: \$9,500.00

TYPE: Fixed/Sole Source

CONTRACT PERIOD: 5/1/84 - 7/31/84

DATE EXECUTED: 4/16/84

INITIATED BY: Jonathan Miller, Director, Office of Public
Diplomacy

SIGNED BY: ?

PURPOSE: (1) Research paper on Nicaraguan
Government's internal and external
information apparatus
(2) Prepare briefing book of Central America
(3) Evaluate Government of El Salvador's
public information programs.

III.

CONTRACT NUMBER: 1001-402296-A

CONTRACTOR: Francis Gomez
6564 Williamsburg Blvd.
Arlington, VA. 22213

AGENCY: Department of State, Office of Public
Diplomacy

AMOUNT: \$9,800.00

TYPE: Fixed/Sole Source

CONTRACT PERIOD: Amends PO# 1001-402296 to extend period of
contract through 9/1/84.

DATE EXECUTED: 7/18/84

INITIATED BY: Jonathan Miller, Office of Latin America
Public Diplomacy

SIGNED BY: Jonathan Miller, 6/15/84; Simon Canady,
Contracting Officer, 7/18/84.

PURPOSE:

- (1) Develop and execute a public affairs strategy and program relating to 11/4/84 elections in Nicaragua. Included in activities shall be coordination of visits to Washington by Nicaraguan citizens and arrangements for meetings, press conferences, interviews and other events.
- (2) Draft and attempt to place in prominent newspapers op-ed type articles for contractor's signature as well as other State Department officials.
- (3) Talking points and speeches reflecting current developments in the region and U.S. policies and approaches to Central America.

IV.

CONTRACT NUMBER: 1001-502074

CONTRACTOR: International Business Communications
Suite 300
1607 New Hampshire Avenue, N.W.
Washington, D.C. 20009

AGENCY: Department of State, Office of Latin America
Public Diplomacy

AMOUNT: \$24,400.00

TYPE: Fixed/Sole Source

CONTRACT PERIOD: 10/1/84 - 12/31/84

DATE EXECUTED: 12/10/84

INITIATED BY: Jonathan Miller, Director, Office of Public
Diplomacy

SIGNED BY: Jonathan Miller, 12/16/84; Simon Canady,
Contracting Officer, 1/28/85

PURPOSE:

- (1) Press conferences, interviews; plan and execute press conferences for visitors from Central America to the U.S., as well as Central Americans in U.S. Provide simultaneous translation services.
- (2) Plan and execute three to four speakers tours to the northeast of the United States, to include Boston, Hartford, Providence, New York, and Philadelphia. Speakers will be Central Americans either visiting or residing in U.S.
- (3) Analysis of documents captured in the conflict in El Salvador.

V.

CONTRACT NUMBER: 1001-520160

CONTRACTOR: International Business Communications
Suite 300
1607 New Hampshire Avenue, N.W.
Washington, D.C. 20009

AGENCY: Department of State, Office of Latin America
Public Diplomacy

AMOUNT: \$90,000.00

TYPE: Fixed/Sole Source

CONTRACT PERIOD: 3/1/85 - 9/30/85

DATE EXECUTED: 3/29/85

INITIATED BY: Frank Gardner, Office of Public Diplomacy

SIGNED BY: Barbara Garland, 4/1/85; Contracting Officer:
Richard Miller, President, IBC

PURPOSE:

- (1) Assist U.S. visits of Central American political, business and humanitarian organization representatives
- (2) Assist Central American refugees and exiles in Washington
- (3) Translation and distribution of Central American articles for distribution to U.S. news organizations and public interest groups
- (4) Point of contact for congressional and public interest offices seeking to interview refugees
- (5) Seek out media opportunities for exiles
- (6) Brief correspondents and syndicated columnists
- (7) Compose and edit letters to the editor in response to article on Central America
- (8) Provide Office of Public Diplomacy with op-ed articles and feature articles for distribution, under Office of Public Diplomacy signature or by an IBC designated person

VI.

CONTRACT NUMBER: 1001-602066

CONTRACTOR: International Business Communications
1912 Sunderland Place, N.W.
Washington, D.C. 20036-1608

AGENCY: Department of State, Office of Latin America
Public Diplomacy

AMOUNT: \$276,186.00

TYPE: Cost-Plus-Fixed-Fee

CONTRACT PERIOD: 10/1/85 - 9/30/86

DATE EXECUTED: 9/2/86

INITIATED BY: Robert Kagan, Office of Public Diplomacy

SIGNED BY: Richard Miller, President, IBC, 9/2/86;
Barbara Garland, Contracts Officer, 9/2/86

(Contract declassified by Robert Kagan, Acting Director, Office of Public Diplomacy, 1/28/86)

PURPOSE:

A. Public Diplomacy Efforts:

- (1) Provide advice and assistance to Central American representatives of civic, labor, business, and humanitarian groups during visits to Washington
- (2) Provide contact with Central American refugee groups and exiles in U.S.
- (3) Translate articles on Latin American/Caribbean and distribute to media
- (4) Provide point of contact for public interest groups
- (5) Coordinate and accompany media visits to the U.S.
- (6) Provide source material relating to regional conflict to persons designated by Office of Public Diplomacy
- (7) Provide and present information on security considerations, refugee problems, and political dynamics of the region

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(8) Edit briefs and all material to be used by Office of Public Diplomacy

(9) Conduct special studies/projects

B. Distribution Services — Design and operate distribution system including:

(1) Specialized addressee list

(2) Computerization, coding, maintenance and updating of lists

(3) Retrieval, storage, mailing, and shipping of publications

(4) Maintenance and control of materials

(5) Distribution of materials

(6) Evaluation of system

United States Department of State



Office of Inspector General

AUDIT REPORT NO. 7PP-008

SPECIAL INQUIRY INTO THE DEPARTMENT'S
CONTRACTS WITH INTERNATIONAL BUSINESS
COMMUNICATIONS AND ITS PRINCIPALS

JULY 1987

REPORT ON
SPECIAL INQUIRY INTO THE
DEPARTMENT OF STATE'S CONTRACTS
WITH INTERNATIONAL BUSINESS COMMUNICATIONS
AND ITS PRINCIPALS

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REPORT ON
SPECIAL INQUIRY INTO THE
DEPARTMENT OF STATE'S CONTRACTS
WITH INTERNATIONAL BUSINESS COMMUNICATIONS AND
ITS PRINCIPALS

I. EXECUTIVE SUMMARY

In response to a request from the Secretary, the staff from the Office of Inspector General (OIG) examined the Department's contracts with International Business Communications (IBC) and Frank Gomez, one of its principals. These contracts were entered into by the Department's Office of Public Diplomacy for Latin America and the Caribbean (LPD) which initially operated out of the Secretary's office and currently is located in the Bureau of Inter-American Affairs (ARA).

The examination covered six purchase orders and contracts totalling about \$436,000 with IBC or Frank Gomez between February 1984 and September 1986. In addition, the examination included one purchase order for \$5,500 with the Institute for North-South Issues, a firm established by Frank Gomez. IBC is a Washington, D.C. public relations firm and the Department's contracts with IBC were for media relations activities such as arranging media events, interviews, and public appearances for Central American refugee groups and exiles in the United States; preparing talking papers, briefings, and op/ed articles; translating articles on Latin America and the Caribbean and making them available to U.S. news organizations and public interest groups; and designing and operating a mail distribution system for materials and information on Latin America and the Caribbean.

Findings of the examination are as follows:

- The need for the purchase orders and contracts was justifiable in the beginning, but was questionable in the later periods as LPD's in-house staff grew and gained experience.
- The acquisition process for awarding and administering the purchase orders and contracts was mismanaged. In addition, one contract was improperly classified SECRET, without legitimate justification, apparently to avoid competition and public disclosure of the contract in the Commerce Business Daily.
- Some charges to the final contract between LPD and IBC are questionable, particularly travel expenses of Central American refugees brought to the United States for media events and expenses for ADP equipment used in developing and operating the document distribution

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system. The specific amounts will be described in a separate report of an incurred cost audit, currently underway by OIG staff. In addition, the conduct of media relations training by IBC for Salvadoran military officials differed so significantly from what was contracted for that collection efforts should be instituted to recover funds from IBC. Although deliverables were vaguely defined and reported, the performance by Frank Gomez and IBC on all other purchase orders and contracts was approved, accepted, and frequently applauded by LPD officials.

- Many of LPD's activities provided opportunities to conduct prohibited lobbying activities; however, there is no evidence that LPD officials, or IBC personnel while working under LPD contracts, violated the anti-lobbying statute. Among other things, the LPD Coordinator and staff traveled and spoke extensively on the merits of the Administration's Central America policy. LPD staff and contractor personnel sponsored and escorted Central American refugees and exiles to cities in the United States for speaking engagements before various groups.
- Violations of ethical standards and/or conflict of interest restrictions may have occurred in the case of two individuals. Since neither was an employee of the State Department, referrals were made to the appropriate Government agencies for consideration and appropriate action.
- Some of the information provided by the Department to Congressional requesters and to Public Affairs for press briefings was inaccurate, incomplete, and misleading. We found no evidence that errors were made intentionally.
- Responsiveness to Congressional requests for information about these and similar contracts has been somewhat slow and fragmented, partially due to the large volume of requests which have been received. Much information was provided, however, and we found no evidence that the Department personnel deliberately delayed or frustrated Congressional requesters. The role of the Office of the Legal Adviser in collecting, examining, and releasing documents on the IBC and other procurements has been poorly understood and has caused resentment by Congressional members and staff.

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II. PURPOSE AND SCOPE

As a result of a number of press articles critical of the Department's association with International Business Communications (IBC) and its principals, the Secretary requested an examination of the subject by the Office of Inspector General (OIG). The request, dated February 13, 1987, asked OIG to examine (1) the procedures followed in entering into all contracts between the Department and IBC or its principals, Frank Gomez and Richard Miller and (2) the performance under those contracts. The Legal Adviser's memo transmitting the request mentioned and included, as attachments, information on alleged improper lobbying activities, improper classification of an IBC contract as SECRET, that the contract was signed after most work was performed, and a brother/sister relationship between personnel of the Office of Public Diplomacy for Latin America and the Caribbean (LPD) and IBC.

We established the objectives for this special inquiry by considering the request from the Secretary, examining the articles which had appeared in the press, and holding preliminary discussions with Department officials. The specific objectives were to determine:

- Whether the contracts with IBC and its principals were needed or whether the work should have been performed in-house;
- Whether required procurement and contracting procedures were followed;
- Whether the contractor performed the work required by the contract and charged reasonable and allowable costs to the Department;
- Whether LPD personnel, or IBC personnel while performing under contract to the Department, participated in improper lobbying activities;
- Whether conflicts of interest or violations of ethical standards occurred as a result of the conduct of or relationships between LPD and IBC personnel;
- Whether information provided by the Department to Congressional requesters and for press briefings was accurate and appropriate; and
- Whether Department officials or offices intentionally delayed in providing information to or withheld information from Congressional requesters.

The inquiry included six purchase orders and contracts with Frank Gomez or IBC totaling \$435,584 between February 14, 1984 and September 30, 1986.

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Institute for North-South Issues (INSI) for \$5,500 for September 1985 was included because INSI was established by Frank Gomez. This represented the extent of the Department's contracts with IBC and its principals. There were no contracts or purchase orders with Richard Miller as an individual. The inquiry was limited to performance by these organizations and individuals on the contracts with the Department. Activities of the organizations and individuals for other clients were not included in the scope of the inquiry.

The inquiry was conducted in accordance with generally accepted government auditing standards and included appropriate tests to evaluate the adequacy of internal controls and procedures used to protect funds and assets from waste, fraud, and mismanagement. In the course of the work, applicable program and contract files were examined. In addition, Department officials in the Office of the Legal Adviser (L), the Office of Public Diplomacy for Latin America and the Caribbean--initially in the Office of the Secretary (S/LPD) and currently in the Bureau of Inter-American Affairs (ARA/LPD), the Bureau of Administration, Operations (A/OPR) and Office of the Procurement Executive (A/OPE), the Bureau of Legislative and Intergovernmental Affairs (H), the Bureau of Public Affairs (PA), and the Foreign Service Institute (M/FSI) were interviewed, as well as officials of IBC and its legal counsel.

We distributed a copy of this report in draft to affected offices and officials in the Department for their comments and incorporated the more significant into the appropriate sections of the report. In addition, we have included the complete responses of the former head of S/LPD, the current head of ARA/LPD, the Deputy Assistant Secretary, Office of Operations, Bureau of Administration (A/OPR), and the Procurement Executive (A/OPE) as Exhibits B through E.

III. BACKGROUND

By White House "Memorandum for Special Planning Group Principals" of July 1, 1983, Mr. Otto J. Reich was given the dual designation of Secretary of State's Advisor for Public Diplomacy and Coordinator for Public Diplomacy for Central America and the Caribbean. The Coordinator's office was to be located in the Department of State, with staff support to be detailed from other agencies and departments. His activities were to begin immediately.

Coordinator Reich came to State with no staff support except for his secretary whom he had brought from the Agency for International Development (AID). His office was established as the Office of Public Diplomacy for Latin America and the Caribbean (S/LPD). Lacking adequate staff, Mr. Reich obtained permission to contract for a short term professional services contract in February 1984 with Frank Gomez, an outside public relations specialist. The relationship proved highly satisfactory to both parties and was continued through successive sole source contracts with Mr. Gomez or with International Business Communications (IBC), the partnership company Mr. Gomez formed with Richard Miller, through fiscal year 1986.

The purchase orders and contracts for S/LPD with IBC or its principals are listed below. One purchase order, 1001-502356, was with the Institute for North-South Issues (INSI). That order is included because INSI was founded by Frank Gomez.

<u>Number</u>	<u>Contractor</u>	<u>Performance Period</u>	<u>Amount</u>
1001-402214	Gomez	02/14/84 - 05/31/84	\$ 9,500
1001-402296	Gomez	05/01/84 - 07/31/84	19,300
1001-402486	IBC	(Aug/Sept 1984)	16,198
1001-502074	IBC	10/01/84 - 12/31/84	24,400
1001-502160	IBC	03/01/85 - 09/30/85	90,000
1001-502356	INSI	09/01/85 - 09/30/85	5,500
1001-602066	IBC	10/01/85 - 09/30/86	276,186
			<u>\$441,084</u>

During the early purchase orders Mr. Gomez prepared talking points papers, fact sheets, and draft speeches for S/LPD speakers, drafted op-ed articles, and arranged press conferences for Central American visitors. During the late 1984 and early 1985 period IBC continued and intensified these activities, plus arranging for translation and publication of documents critical of the Sandinistas in Nicaragua and arranging visits for Nicaraguan defectors to speak in major U.S. cities. In the final contract IBC designed and operated a computerized mailing list for S/LPD's publications.

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S/LPD classified the FY 1986 contract SECRET, maintaining that it contained national security information. The classification led to numerous complications, security violations, and delay in signing of the contract until September 2, 1986, in the final month of the contract's term. This in turn raised suspicions in the media and in Congress after the contract came to light that the secret classification was intended to cover illegal lobbying.

In January 1986 the Coordinator of S/LPD was nominated as Ambassador to Venezuela and withdrew from active leadership of S/LPD. He was succeeded in May 1986 by Robert W. Kagan. At that time S/LPD was transferred from the office of the Secretary to the Bureau of Inter-American Affairs (ARA). Mr. Kagan decided to discontinue the contractual relationship with IBC and have the contract functions performed by the ARA/LPD staff.

Congress and the media began to question the State Department's dealings with IBC and its principals, Frank Gomez and Richard Miller in late 1986 and early 1987. Various allegations of illegal lobbying and political activity began to focus on the secret contract with IBC.

On February 13, 1987, the Secretary of State requested the Inspector General to examine the procedures followed in entering into all contracts with IBC or its principals, and the performance under those contracts.

This is the Inspector General's report on his findings.

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inadequate sole source justifications. The documents furnished by the S/LPD program officials as justifications did not meet the requirements of acquisition regulations, but were merely capability statements. The OPR/STP contracting officials did not challenge the adequacy of the justifications. They simply accepted the documentation and did not seek free and open competition.

For example, Purchase Order No. 1001-402214 was the initial order with Mr. Gomez placed in February 1984 on a sole source basis by OPR/STP contracting officials. S/LPD's request included a document titled sole source justification. The document was merely a description of Mr. Gomez's background and capability, however. It did not demonstrate that he was the only source that could provide the services required by S/LPD.

Once this document was accepted without question by the OPR/STP officials, the die was cast. During the work of the initial order, S/LPD officials began negotiating with Mr. Gomez for the next purchase order. They used essentially the same justification for the next purchase request they prepared for Mr. Gomez's services. Using the inadequate justification, the OPR/STP contracting officials placed the second order (1001-402296) with Mr. Gomez in July 1984.

In the final contract with IBC another feature of contracting was added--the Competition in Contracting Act of 1984 (CICA). At the time this contract was being considered by S/LPD officials, the FAR had been changed to include the CICA provisions. OPR/STP contracting officials brought the new FAR provisions to S/LPD's attention; including the requirements to publicize even proposed sole source awards and seek competition to the maximum practicable extent even in cases of urgency. This contract was classified SECRET by S/LPD officials, not publicized by OPR/STP officials, and was eventually awarded on a sole source basis some 11 months after IBC began the work at S/LPD's direction.

This final contract with IBC included the addition of a new requirement, on a sole source basis, for the design and operation of S/LPD's distribution system. The distribution system services were not included in the media relations services that S/LPD had been obtaining from IBC during the period of February 1984 through September 1985. Nonetheless, S/LPD officials proposed IBC as a sole source for these seemingly ordinary services.

We believe that additional measures are needed to improve OPR/STP's compliance with the competition requirements in the Federal Acquisition Regulation. Moreover, we believe that any instructions prepared to address improvements in compliance with the competition requirements should be furnished to all the Department's acquisition offices. (Recommendation 2).

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c. Acquisitions Were Not Publicized in the Commerce Business Daily

OPR/STP contracting officials did not comply with the requirements of the acquisition regulations on publicizing proposed contracts in the CBD. None of the purchase orders or contracts over \$10,000 awarded to Mr. Gomez or IBC were publicized by OPR/STP contracting officials and this noncompliance was encouraged by the S/LPD program officials.

Some of the acquisitions were made during the time the Federal Procurement Regulations (FPR) were in effect (through March 31, 1984) and other acquisitions were made under the present regulations, the FAR. The FPR and the FAR both contained specific requirements for synopsisizing proposed contracts over \$10,000.

Based on evidence in the files, the only acquisition which was considered for CBD publication was contract 1001-602066. This contract was for IBC services for FY 1986 and was awarded through the ratification process some 11 months after IBC was directed by S/LPD officials to begin the work without a contract. It was awarded in the not-to-exceed amount of \$276,186 and contained the new requirement for IBC services related to the design and operation of the S/LPD distribution system.

The S/LPD request for FY 1986 services from IBC was prepared the day before the contracting officials sent the new CICA guidance to the S/LPD officials. The S/LPD request contained the same justification for not publicizing the requirement as the first contract with IBC: "... the services and contractual arrangements of which are not to be disclosed publicly because of their character, ingredients, and components." The OPR/STP contracting officials cited the revised FAR and stated that the previous basis for not disclosing work with IBC was no longer acceptable because the FAR required publication in the CBD of proposed sole source awards and competition, to the maximum practical extent, for even those requirements that were determined to be urgent. After interaction between various Department staffs, a decision was made by S/LPD officials to have the contract and the entire contract file classified SECRET for "national security reasons." This action caused a series of delays in the acquisition process.

The OPR/STP contracting officials were aware of the requirement that S/LPD had for FY 1986 services in late September 1985, but did not act to publicize the requirements in the CBD. The negotiation summary in the contract file prepared by OPR/STP officials and dated August 26, 1986, stated: "The procurement was not synopsisized in the Commerce Business Daily (CBD) due to the highly sensitive nature of the services, and the fact that S/LPD did not want the requirement to become public knowledge." [emphasis added.] In the same files, in the justification for other than full and open competition, dated April 3, 1986, the OPR/STP officials stated:

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"National Security," as the basis for not providing for full and open competition. That justification went on to state: "FAR Chapter 5.202 provides an exception to synopsisizing a procurement in the Commerce Business Daily (CBD) if disclosure of the Agency's needs would compromise the national security. In the case of this contract, the contractor will be performing services that fall within that criterion."

In our opinion, the reason cited by the OPR/STP contracting official for not synopsisizing the proposed contract did not adequately address the FAR requirements. FAR 5.202(a)(1) states that the contracting officer need not submit the notice to the CBD when the contracting officer determines that - "The synopsis cannot be worded to preclude disclosure of an agency's needs and such disclosure would compromise national security (e.g., would result in disclosure of classified information)." The fact that a proposed solicitation or contract action contains classified information, or that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception to synopsis. .

We believe the Department should issue additional instructions on the requirements for CBD synopsis. (Recommendation 3).

d. Acquisitions Were Apparently Split to Circumvent Regulations

Purchase orders with Mr. Gomez and IBC were made on a fragmented basis apparently to circumvent the acquisition requirements. The first three purchase orders were based on split requirements prepared by S/LPD program officials for periods of performance of a few months and at dollar levels below \$10,000, the threshold for small purchases in effect when these orders were awarded. The final S/LPD request for a small purchase award to IBC was under \$25,000, the small purchase threshold in effect at the time that order was awarded. S/LPD program officials knew they were going to continue to use Mr. Gomez's services for an extended period of time because while he was working under a purchase order or contract, S/LPD was negotiating with him for the next purchase order or contract. OPR/STP contracting officials were aware of these S/LPD actions because the S/LPD requisition documents referred to extensions of previous orders or continuation of previous services. However, the OPR/STP contracting officials did not attempt to stop these practices.

We believe that additional measures are needed to bring the small purchasing operations into compliance with PART 13 of the FAR. (Recommendation 4).

e. OPR/STP Contracting Officials Did Not Perform Adequate Contract Administration

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Preaward administration includes the actions that contracting officers are required to take prior to signing a contract to determine that a proposed acquisition meets all the requirements of law and regulation. Postaward administration includes the actions that contracting officers are required to take during the period the contract work is performed up to contract completion and close out. OPR/STP contracting officials did not perform adequate preaward administration and did not perform any postaward administration.

(1) Preaward Administration

The two contract files for contracts placed with IBC showed that the OPR/STP contracting officials accomplished most of the preaward actions required by the FAR; however, there were some preaward actions that were either overlooked or were not treated adequately. Some examples of the preaward administration activities that were either lacking or inadequate were as follows:

Contract No. 1001-502160

-- The contract was placed on an after-the-fact basis but was not treated as a ratification action because of a reference in the file to a verbal approval from the Department's Procurement Executive.

-- The information in the price negotiation memorandum for the \$90,000 fixed price contract was not sufficient to demonstrate that the price was fair and reasonable nor did it offer convincing evidence that a fixed price contract was the appropriate type of contract because of the number of uncertainties in the work to be performed.

-- The matter of determining that IBC was a responsible bidder was not adequately addressed by the OPR/STP contracting officials. We were told by the OPR/STP contracting officials that they had accepted IBC as a responsible bidder based on previous purchase orders placed with IBC. However, when the next contract with IBC was negotiated, it became apparent that the matter was not addressed in adequate depth. The next contract with IBC, for FY 1986 services, was classified by S/LPD officials and IBC was required to obtain a facility clearance prior to contract execution. Attempts to grant a security clearance for IBC were delayed at one point because the investigators found that IBC was in fact a loosely formed association between two other companies. If the OPR/STP contracting officials had pursued the issue of contractor responsibility as required by the FAR in their preaward actions for the \$90,000 IBC contract, the organizational issues that later caused the delay in the clearance might well have been avoided.

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Contract No. 1001-602066

-- The OPR/STP contracting officials negotiated this contract on a cost-plus-fixed-fee basis using audit information developed by a review of the IBC cost proposal by the Department's Inspector General. The OPR/STP contracting officials failed to require IBC officials to execute a certificate of current cost or pricing data as required by FAR 15.804-4.

(2) Postaward Administration

There was no evidence of any postaward administration in either the small purchase order or the contract files. We were told by the OPR/STP contracting officials that no administration was performed. Some of the more significant problems we identified were as follows:

-- There was no oversight by the OPR/STP contracting officials of important features of the acquisitions such as timely and complete deliveries of the services and payments of contractor invoices.

-- In the case of the final contract, a cost type contract, the OPR/STP contracting officials had not acted to obtain a final audit of the IBC costs or to settle the issue of the number of hours contracted for under the level-of-effort arrangements in the contract. The contract work was supposedly completed in September 1986; however, the actions described previously were not initiated by the contracting officials until the OIG staff began this inquiry in early 1987.

We believe that improvements are needed in the performance of preaward and postaward contract administration functions. (Recommendations 5 and 6).

f. Other Problems

We considered the lack of procurement planning that was evident in the acquisitions from Mr. Gomez, IBC, and INSI. The use of urgency as the basis for these acquisitions for the S/LPD needs was caused by a lack of sound acquisition planning.

We discussed the issue with the cognizant contracting officials. We were told that acquisition planning procedures were being developed and that requests for planned acquisitions were issued but with little results. We were also told that several policy letters on acquisition planning had been issued, the latest on March 27, 1987.

The FAR requires agencies to perform acquisition planning. Part 7 addresses acquisition planning and contains a multitude of specific requirements for agencies to follow to establish a satisfactory acquisition planning system. One of the primary purposes of the planning system mandated by the FAR is to

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promote and provide full and open competition or, when other than full and open competition is authorized by the FAR, to obtain competition to the maximum practical extent possible.

The actions taken by OPR/STP contracting officials to award purchase orders and contracts for S/LPD program officials based on urgent needs of the S/LPD program could have been avoided had the Department enforced the acquisition planning requirements. (Recommendation 7).

Our review of the acquisitions from Mr. Gomez, IBC, and INSI also included a review of the Department's policies and procedures currently in effect for acquisitions by OPR/STP contracting officials. The instructions we reviewed included the Department of State Procurement Regulations (Title 41, Chapter 6) and the Procurement Division Instructions issued by the OPR/STP staff. These procedures were not current with the FAR and did not address a number of the acquisition policy and procedure questions we were reviewing.

For example, during our review of the ratification action of the final IBC contract, we found that the procedures for contract ratification were in the as yet unpublished Department of State Acquisition Regulation (DOSAR). The DOSAR was published in the Federal Register for public comment on May 28, 1987. When published in final form, it will become the Department's implementation of the FAR. The delay in issuing Departmental procurement regulations has been a longstanding problem and we believe that a high priority should be placed on finalizing and publishing these regulations. (Recommendation 8).

9. Problems Reported Previously

These deficient acquisition practices are not new. A previous audit report issued by the Department's Inspector General in July 1983 on OPR/STP acquisition activities included the following:

- "Requisitioning organizations frequently engage in procurement activities before submitting a procurement request to OPR/STP/P. They often conduct market surveys and even solicit proposals using OPR/STP/P not as the Department's major procurement activity, but as a requisition processor." The audit report included a recommendation that OPR/STP should advise all requisitioning organizations of their precise responsibilities and limitations in procurement activities.
- "The inordinate use of sole-source procurement is attributed mainly to insufficient time to permit formal advertising or competitive negotiation and to unquestioned acceptance of the sole-source justifications of requisitioning offices." The report

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included the recommendation that OPR/STP should not process requisitions which stipulate sole source procurement unless the criteria have been satisfied.

- "OPR/STP, in accordance with FPR 1-3.807-2, should establish controls and set forth procedures to assure that price or cost analysis is performed on each negotiated contract awarded and that such action is adequately documented in the contract files."
- "OPR/STP should emphasize to all Department organizations the importance of their early identification of planned acquisitions in the procurement process even though funding is not a certainty."

Apparently, the actions taken in response to the report were not adequate to resolve the problems.

In the course of our interviews with the cognizant contracting officials we were told that there was a great deal of pressure to place the S/LPD orders and that there were inadequate OPR/STP personnel resources at the time the acquisitions were processed to perform the functions related to the acquisition process. One official simply stated that the OPR/STP small purchasing staff failed to do their job.

Contracting officials told us they generally agreed that the sole source justifications were inadequate and they did not question S/LPD officials on their actions to split the purchase requirements. Moreover, we were told that the shortage of staff caused OPR/STP to act as a "rubber stamp" operation.

2. Training Order Placed by the Foreign Service Institute Registrar

The Foreign Service Institute (M/FSI) Registrar placed Training Order No. 1001-402486 for \$16,198 with IBC on September 10, 1984. The training order required IBC to conduct seminars in El Salvador on improving press relations for El Salvadoran military officials in late August and early September of 1984. The use of an M/FSI training order to obtain these IBC services appears to be inconsistent with the principles that generally apply to M/FSI training orders. Normally, M/FSI arranges for training for State Department employees that is job related. The training order with IBC was for media relations training for officials of a foreign government and was conducted by a private company in a foreign country.

According to the IBC proposal, it had been instructed to plan and execute a series of mini seminars of two days each for about fifteen persons per session. In addition to the formal class work, IBC planned to arrange meetings between a former Ambassador and senior government officials for him to impart insights, methods, and recommendations.

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The M/COMP Certifying Officer stated that the invoices submitted by companies which have performed services under a training order are "self-certifying." We were told that the training order form statement--"I certify that the above named student has been properly registered as stated" was used by M/COMP personnel as the basis for certifying an invoice for payment. Therefore, the documents needed for M/COMP to process a training order payment would be a copy of the training order and the company's invoice.

We believe the procedures for "self-certification" of contractor invoices may be an appropriate method for processing payments when M/FSI personnel use a training order to acquire training using M/FSI funds for job-related training for employees. However, we believe that the use of "self-certification" of contractor's invoices for the IBC training order was not an appropriate method to process payments since the services provided by IBC deviated from the normal M/FSI training procedures.

In discussions with an IBC official we were told that IBC was asked to improve Salvadoran public relations capabilities. We were told that IBC prepared materials for the program and went to El Salvador. While there, IBC met with various people and gave them advice and a plan; however, the "seminar" never took place as a formal seminar. Instead, individual counseling took place with 20 to 25 individuals. The former Ambassador informed us that he went to El Salvador in June 1984 but not during the period late August and early September 1984. Moreover, he said that except for his travel expenses he received no other payment for the work he performed in June 1984. The IBC proposal for the seminar in August/September 1984 included a \$1,000 honorarium for the services of the former Ambassador. During the same period IBC was providing services to S/LPD under purchase order 1001-402296. The order covered travel expenses to El Salvador for IBC personnel and the evaluation of the government's public information programs. S/LPD officials were unaware of the nature and extent of IBC performance under the training order.

While the IBC official told us that the work ordered by M/FSI's training order was not performed in accordance with the specific requirements of the order, the invoice submitted by IBC showed tuition for ten officials for a price of \$16,198 for a two-week seminar for El Salvadoran Government Officials in late August--early September 1984. This IBC invoice was paid based on the "self-certification" process.

On July 13, 1987, M/FSI informed us that its internal controls over pass-through contracts such as the one discussed above had been strengthened to prevent similar problems in the future. We believe the delegation of procurement authority to M/FSI should be reviewed to determine whether it is appropriate for the Registrar to continue to award these types of training orders in the future. (Recommendation 9). Moreover, we believe

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that action should be taken to recover funds from IBC since the services specified in the training order issued by M/FSI were not performed. (Recommendation 10).

Comments of Department Officials

In commenting on a draft of this report, the former head of S/LPD stated (1) he was not aware of the procurement policies and regulations, (2) he relied on his staff and procurement office staff to insure that appropriate rules were complied with, (3) he was never informed about any irregularities in S/LPD's procurement practices, rather, he was informed that such practices were followed all the time, (4) he was not adequately supported by the Department with administrative and other personnel familiar with Departmental procedures, and (5) the pricing of many of IBC's activities such as handling defectors and establishing credibility of U.S. government officials was difficult to establish.

Officials in A/OPR and A/OPE described the causes for the problems somewhat differently. Both stated that a lack of resources within the procurement function has been a historical problem in the Department and has hindered the carrying out of effective procurement operations. However, both also stated that the majority of the fault for the problems with the IBC contracts was with the programming office (in this case S/LPD) rather than the procurement or contracting officials. A/OPR commented that S/LPD exploited the situation by entering into unauthorized commitments, selecting the source, deciding upon dollar amounts and relying on the contracting officer to correct the situation on an urgent and compelling basis to facilitate payment. Both A/OPR and A/OPE stated that S/LPD used extreme duress and "steamrolled" procurement officials to process acquisitions which did not comply with appropriate regulations. A/OPR also commented that the report did not recognize the considerable progress which has been made in the procurement operations in the Department since the subject contracts with IBC and its principals were processed. Along these lines, he stated that most of the recommendations concerning procurement operations have already been implemented.

We acknowledge that a lack of personnel resources could have been a contributing factor in the operations of both S/LPD and procurement. We found that the former head of S/LPD made many requests for staffing and other support for his office. We also verified that administrative positions in S/LPD turned over frequently and were vacant during some periods. In summary, we agree that S/LPD probably was not adequately supported by the Department. We also acknowledge that the lack of adequate personnel resources in the procurement function has been a problem reported previously by the Inspector General. Concerning progress made in procurement activities we believe that significant improvements may have been made; however, the scope of this inquiry was limited to specific procurement actions, some of which were several years old. We did not

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conduct a review of the Department's procurement function and therefore cannot comment on its overall operations. We will, however, conduct a complete examination of procurement activities in the future.

In our opinion, as we stated in the report, both S/LPD and procurement personnel are responsible for the problems in the acquisition process. We believe that as a manager, the former head of S/LPD had a responsibility to be knowledgeable of basic federal procurement requirements, such as the prohibition against directing a contractor to begin work or otherwise committing the government to contracts without the authority to do so.

C. Reasonableness of Prices and Performance

Some charges to the FY 1986 contract appear to be questionable. The specific types and amounts of such costs will be described in a separate report on an incurred cost audit which currently is being conducted by OIG staff. In addition, as previously discussed under the Acquisition Process, IBC's conduct of a media relations seminar differed so significantly from its proposal for the seminar that we recommended collection efforts by Department officials (see Recommendation 10). While deliverables were vaguely defined and reported, the performance by Frank Gomez and IBC on all other purchase orders and contracts was approved, accepted, and frequently applauded by S/LPD officials.

With the exception of the FY 1986 contract, we did not conduct incurred cost audits because the purchase orders and contracts were fixed price procurements. Our audit of that contract has been delayed somewhat because of the unavailability of documents and because we were requested to work through the legal firm representing IBC in obtaining information about the work performed. Based on preliminary results of the audit, it appears that travel and ADP equipment costs charged by IBC are questionable.

The travel expenses included lodging, transportation, meals, clothing, and other items for individuals while they were in Washington, D.C. and other cities in the United States under the sponsorship of S/LPD. During these visits, the exiles and defectors were giving interviews; meeting with groups, members of Congress; and attending press conferences. These work elements and costs were not specifically included in the final contract issued by procurement, although they were included in the proposal sent to OPR/STP. The amount that is disallowed will be determined during the incurred cost audit.

The charges for computer support need to be recomputed. In the cost proposal, IBC stated that \$25 an hour was the best price available from vendors for computer access. This rate was accepted for use in the cost review. The actual amount IBC billed for computer usage totalled \$7,981. This amount equalled the total cost of computer support.

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supplies purchased by IBC (\$8,277). Since the equipment was not used only for the Department of State contract, and is still available for use by IBC for other clients and its own staff, there should be an adjustment of the computer charges.

Finally, the indirect rates need to be recomputed. Provisional indirect rates were computed during the cost proposal review. These rates are subject to recomputation and adjustment based on the actual costs incurred. Work performed under the FY 1986 contract, as well as all work under all other purchase orders and contracts except the M/FSI training order was invoiced, approved for payment by S/LPD officials, and certified and processed for payment by M/COMP personnel. In each case it appears that at least some work was performed; however, it appears that Department personnel approved invoices for payment without adequate evidence that required work had been conducted.

For example, the purchase order with INSI for \$5,500 was for an analysis of S/LPD's distribution system for publications on Central America. The invoice from INSI to S/LPD was a one sentence statement that the analysis had been completed and that payment was requested. An S/LPD official certified that the work had been completed and forwarded the invoice for payment and payment was made. There was no written report of the analysis. Frank Gomez informed us that, while no written report was prepared, an analysis was conducted. He stated that the main purpose of the purchase order, however, was to start designing and implementing a new distribution system for S/LPD. The S/LPD official who certified the invoice for payment informed us that he did not recall whether an analysis had been performed.

We believe that purchase orders and contracts should be more specific in describing required performance and that officials approving invoices for payment should have more evidence that the required work has been performed. (Recommendations 11 and 12). On balance, almost all officials we interviewed expressed satisfaction with the quality and level of performance on the subject contracts.

Comments of Department Officials

In commenting on a draft of this report the former head of S/LPD again expressed satisfaction with the level and quality of work performed by IBC and Frank Gomez for the Department. He described in some detail the difficulty in pricing such activities as re-establishing the credibility of government officials or the handling of defectors, two of the functions he stated were being purchased under the contract. While we agree that establishing a price for some activities may be difficult, it is firmly and clearly required by procurement regulations. The response also illustrates the nature of the problem with vaguely defined work elements. As stated the functions are not only difficult to price but also difficult to measure, evaluate,

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and certify as completed so that payment can be authorized--also required by procurement regulations.

D. Lobbying Activities.

Although allegations were widespread, there is no evidence that S/LPD staff participated directly or indirectly in any unlawful lobbying or that IBC spent S/LPD contract funds for lobbying activities. Many of S/LPD's and IBC's activities under contract with S/LPD provided opportunities to conduct prohibited lobbying; however, there is no evidence that these officials violated the anti-lobbying statute.

Public diplomacy is separated from lobbying by a thin and complex line. The basic legislation, 18 USC 1913 (the "anti-lobbying statute") provides that

"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business."

Many of S/LPD's activities provided opportunities to conduct improper lobbying. The Coordinator and staff traveled and spoke extensively on the merits of the Administration's policy and programs for Central America. S/LPD paid for the cost of publication and circulation of pamphlets and articles favorable to the Administration's policy. S/LPD sponsored, paid for, and escorted Central American refugees and exiles to cities in the United States for speaking engagements before members of Congress and various private sector audiences. If, in carrying out these activities, S/LPD personnel had suggested or agreed that a member(s) of Congress should be contacted and encouraged to support programs in Central America, a violation would have occurred.

During our inquiry we questioned a number of S/LPD's activities and discussed them with OIG investigations staff and the Department of Justice. One such activity was reflected in a June 25, 1985, memorandum from the Administrative Officer of S/LPD to the S/S-EX Budget Officer providing information in support of S/LPD's budget request. The memorandum contained the following statement:

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"During the recent congressional hearings on financial assistance to the freedom fighters in Nicaragua, S/LPD furnished floor speeches and talking papers to Congressional supporters of the President's program".

During discussions with an official from the Department of Justice we were informed that this activity was not a violation of the anti-lobbying statute as it has been interpreted by the Department of Justice. According to this individual, violations are evident only where the appropriated funds are used to effectuate a grass roots type of campaign directed at influencing a member(s) of Congress.

To some extent Congress was informed of S/LPD's activities. In the Department's FY 1987 budget request, under the Office of the Secretary, the following information was included:

"One unit within the Office of the Secretary is the Office of Public Diplomacy for Latin America and the Caribbean. This office has coordinated the efforts of appropriate agencies of the Federal Government toward a better public awareness and understanding of the administration's policy in Latin America and the Caribbean. This office also sponsors the public appearances of individuals whose experiences in Latin America or the Caribbean are germane to public debate on policy issues for the region. In the last 12 months, the office has arranged for more than 400 public appearances (including speaking before refugee and exile groups in the United States), and more than 100 radio and television appearances, of its staff and others, including foreign visitors. * * * During the same period it has arranged for publication and dissemination of publications and pamphlets (including translations of foreign originated articles)."

There is no evidence that IBC performed lobbying activities for the Department under contract. Notwithstanding the considerable press coverage of IBC's activities in this and related areas, our work to date has disclosed no evidence that S/LPD knowingly paid IBC or Frank Gomez to perform prohibited lobbying activities. As mentioned previously, the scope of our inquiry included only the activities of IBC or Frank Gomez performed under the purchase orders and contracts with the Department between 1984 to 1986. Our work did not include the activities of IBC or Frank Gomez performed for other clients.

The first head of S/LPD informed us that he was alert from the beginning that his official public diplomacy functions would put him close to the prohibitions against lobbying contained in the State Department appropriation acts and the anti-lobbying statute. He requested guidance from the Legal Adviser's office and circulated to his staff the guidance provided: "Do's and Don't's in Department Public Affairs Activities." Most of the key S/LPD officials we interviewed stated that considerable care was exercised within S/LPD to assure that lobbying violations did not occur.

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There is also evidence that S/LPD participated in a group with other organizations which conducted activities which S/LPD would have been prohibited from performing (e.g. a targeted telephone campaign in selected congressional districts). One example is reflected in a document titled "Chronological Event Checklist" which was located in the S/LPD administrative files and IBC files. The document, dated March 1, 1985, lists week-by-week activities, along with the person or organization responsible for carrying them out. Three of the entries on the checklist are as follows:

<u>Event</u>	<u>Responsibility</u>
Send resource book on the Contadora process to congressmen, media outlets, private organizations and individuals interested in Nicaragua.	State/LPD
Prepare themes for approaches to Congressmen based on overall listed perceptions which will directly attack the publicly and privately expressed objections to voting for financial aid.	NSC
Targeted telephone campaign begins in 120 Congressional districts. CITIZENS FOR AMERICA district activists organize phone-tree to targeted Congressional offices encouraging them to vote for aid to the freedom fighters in Nicaragua.	(Private citizen)

We were unable to establish the authorship of this document and others like it even though we found them in both S/LPD and IBC files. None of the officials we contacted could recall specifically where the documents came from or how they came to be filed with other related documents.

We found no evidence that S/LPD funds, either directly or through its contracts with Frank Gomez and IBC, were used for the activities listed as the responsibility of the NSC and the private citizen. The preparation and dissemination of the publication on the Contadora process was a legitimate activity for S/LPD.

The SECRET classification of the IBC contract for FY 1986 probably gave rise to suspicions among the media and in Congress that illegal or improper activities were contemplated under the contract. The suspicions were enhanced by later revelations that IBC, while under contract to S/LPD, was simultaneously involved in questionable dealings with Lt. Col. Oliver North, et al. On May 7, 1987 one of the IBC partners, Richard Miller,

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pleaded guilty to one count of conspiracy to defraud the government of income tax for his work with Carl R. (Spitz) Channell. There is no evidence, however, that IBC used any S/LPD contract funds for prohibited lobbying activities. Also, according to press reports of the testimony of Messrs. Channell and Miller to the Independent Counsel, they seem to have had no need of State Department funds for their other activities because of the generous funding available to them from the National Endowment for the Preservation of Liberty (NEPL), the tax exempt foundation of Mr. Channell.

Comments of Department Officials

In commenting on a draft of this report the former head of S/LPD objected to our inclusion of the Chronological Event Checklist. He stated that the document was irrelevant to S/LPD's activities and was not prepared by anyone in S/LPD or the Department of State. He stated that the use of the document could give the impression that S/LPD in some way condoned or coordinated the activities listed. The current head of ARA/LPD suggested that the document, and others like it, were provided to the office by IBC. He stated that all such documents were marked CONFIDENTIAL when received from IBC.

The document in question was only one of several we identified in S/LPD's and IBC's files. Other documents covered different time periods and described different activities of different organizations. Some of the documents, even those in S/LPD's files, were marked as classified and some were not. We acknowledged in the report that the authorship of the document was not established and that S/LPD's activity described in the document was an acceptable one; however, we believe that the document itself is relevant and that it accurately reflects S/LPD's association with other groups and organizations involved in activities which S/LPD would have been prohibited from performing or from paying IBC to perform.

E. Ethical/Conflict of Interest Considerations

The special inquiry disclosed a potential violation of ethical standards of conduct and a potential conflict of interest. The ethical question involved a Department of Defense employee detailed to S/LPD. The potential conflict of interest involved activities of Frank Gomez during the period immediately preceding his retirement from the U.S. Information Agency.

1. Ethical Considerations

The Code of Federal Regulations (22 CFR Part 10.735-201) lists various proscribed actions under Ethical and Other Conduct and Responsibilities of Employees. The section states that an employee shall avoid any action, whether or not specifically prohibited by the regulations in this part, which might result in, or create the appearance of: (1) giving preferential

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treatment to any person or (2) losing independence or impartiality.

A Department of Defense detailee to S/LPD, who served as a Senior Military Advisor from June 1984 through June 1986, and as Executive Officer from about June 1985 to June 1986, may have violated these regulations. This individual introduced his sister, who was a specialist in establishing and operating mail distribution systems, to the head of S/LPD and to Frank Gomez of IBC. Both the head of S/LPD and Frank Gomez confirmed that she was introduced by the Senior Military Advisor as his sister. At the time of the introduction, she was employed by a private firm in New York. S/LPD subsequently contracted with INSI and with IBC for analysis, design, and operation of a mail distribution system. The sister was hired by IBC to direct the work under such contracts.

By virtue of his position as the Executive Officer, the Senior Military Advisor was in a position to influence S/LPD's decision to contract for the services and IBC's decision to hire his sister. Also, even though Frank Gomez and IBC had performed various activities for LPD under several previous purchase orders and contracts, operating a mail distribution system was not one of such activities. The analysis, establishment, and operation of S/LPD's distribution system was contracted for on a sole-source basis. In addition, the Senior Military Advisor was involved in the decision by S/LPD officials to classify the final contract with IBC, which included about \$150,000 for design and operation of the mail distribution system. He informed us that he probably made the suggestion to classify the contract although the final decision was made at a higher level. As previously stated, we found that the classification of the contract was done, without justification, apparently to avoid competition and public disclosure of the contract in the CBD.

Since the Senior Military Advisor is a Department of Defense employee who was on a nonreimbursable detail to the Department, we referred the matter to the DOD Inspector General for further consideration and appropriate action on May 18, 1987.

2. Potential Conflict of Interest

Prior to being employed by S/LPD on a purchase order in February 1984, Frank Gomez was employed as the Director of Foreign Press Centers for USIA. He retired from that agency on February 14, 1984 and the performance date for the work called for by the purchase order with S/LPD was February 14, 1984 through May 31, 1984.

Documents contained in the S/LPD files indicate that, while he was employed by USIA, Frank Gomez established the Institute for North-South Issues and negotiated with USIA and the State Department for contract work after he retired. The purchase order discussed above was also negotiated with S/LPD while he was employed by USIA.

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This matter was referred to the USIA IG along with available documentation on May 15, 1987 to determine whether any conflict of interest laws or regulations were violated.

F. Congressional and Press Guidance

A relatively small, but important, portion of information provided to Congressional requesters and as press guidance was either inaccurate, incomplete, or potentially misleading. There was no evidence that mistakes were made intentionally.

The first external interest in the Department's contracts with IBC and its principals was by Senator John Kerry of the Senate Foreign Relations Committee on December 17, 1986. On December 19, 1986, Representative Edward Feighan of the House Foreign Affairs Committee requested information about the IBC and other contracts. Since that time numerous additional requests have been made by:

Congressman Dante Fascell, House Foreign Affairs, 2/9/87
House Foreign Affairs Committee Staff, 2/10/87
Congressman Lee Hamilton, House Foreign Affairs, 2/13/87
Congressman Dante Fascell, House Foreign Affairs, 3/4/87
Senator John Kerry, Senate Foreign Relations, 3/24/87
Congressmen Fascell and Broomfield, House Foreign Affairs,
3/26/87

Senator Kerry's December 17, 1986 request was for "any and all contracts between the State Department, or any agency or entity under its aegis, and International Business Communications, * * * or Richard Miller or Frank Gomez, two of IBC's principals, entered into at any time from 1981 to the present." In responding to the request on January 29, 1987 the Department's correspondence stated: "A search of our contract files covering the year 1981 through the present has surfaced the two enclosed contract documents." The documents referred to were the last two contracts with IBC--the FY 1986 contract for \$276,186 and the contract for the 7 months ending September 30, 1985, for \$90,000. As discussed above, our work shows that there were four earlier purchase orders and contracts with Frank Gomez and IBC totalling \$69,400 between February and December 1984.

Press guidance was prepared on several occasions in February, March, and April 1987. Press guidance prepared by ARA on February 7, 1987 included a series of questions and answers, one of which was as follows:

"Q. Why was the State Department contract with IBC backdated? Is this normal practice?

"A. The contract with IBC was not backdated. The contract was signed in September 1986 to cover the period from October 1985 to September 1986.

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"The contract was negotiated well in advance of being signed. However, its terms required that the contracting firm obtain specific security clearances before the contract could be signed. Procurement regulations allow unclassified work to be performed in such cases pending the receipt of the security clearances necessary to allow the signing of the contract."

The inference that IBC delayed the classified activities and worked only on unclassified activities pending receipt of its security clearance is erroneous. The records show, and anyone familiar with the contract should have known, that IBC was conducting allegedly "classified" activities before receiving its clearance and, in fact, had completed all such activities before receiving the clearance.

We believe that officials providing information for Congressional requesters and press briefings should be reminded to exercise caution to insure that such information is accurate and complete. (Recommendation 13).

G. Departmental Cooperation with Congressional Requesters

Responsiveness to requests for information by members of the Congress and their staffs has been somewhat slow and fragmented, although the volume of information requested has been considerable. The role of the Office of the Legal Adviser in providing information to the requesters was not completely understood and was a source of some friction with some members of Congress and Congressional staff.

Departmental procedures for providing information to Congressional requesters are described in 5 FAM 110 and the Secretariat Handbook. The procedures require Congressional correspondence to be answered, or at least acknowledged, within 3 workdays from receipt in the action office. Concerning requests for information, the stated policy is that all officers are authorized and encouraged to provide prompt and forthcoming support.

The Department has been criticized, mainly by staff of the House Foreign Affairs Committee (HFAC), for not cooperating with Congressional requesters attempting to obtain information about the contracts with IBC and Frank Gomez. On February 19, 1987, in testimony before the HFAC, the Secretary was asked about the Department's unresponsiveness to the Committee's request. The Chairman and Ranking Minority Member stated that "Apparently, the Department is following an internal review process before documents are furnished to the Committee that has effectively choked off the flow of information to the Committee. In the interest of comity, we respectfully request the Department to speed up the process."

The criticism of the Department focuses on two main issues--first, the length of time taken in --

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requests for information and, second, the role of the Office of the Legal Adviser in releasing information to the requesters.

In the case of timeliness, requests for information took as long as a month, or longer, to receive a response. The request from Congressman Feighan, dated December 19, 1986, took over 3 months. On balance, the requests for information from the Department have been voluminous. One request alone involved copies of documentation for 90 procurements on 67 separate procurement actions. Another problem has been that Department officials have been quicker to promise information to Congressional requesters than to deliver such information. During an on-the-record meeting between staff of the HFAC and officials from H, ARA/LPD, OPR/STP, and L on February 10, 1987, numerous questions were asked and requests for information from the Department were made. Department officials agreed to respond to the questions and provide the information requested; however, no one inventoried what had been promised and made sure that information promised was delivered. As of May 4, 1987, some of the information still had not been provided.

The role of the Office of the Legal Adviser in the process for receiving requests from the Congress and responding to those requests has also caused consternation, particularly among Congressional and General Accounting Office (GAO) staff. The role was, or at least was perceived to be, unusual since L normally does not function as a conduit for detailed information requests and responses to such requests. All files and documentation requested by the staff, and, in the initial stages of our inquiry, even by representatives of the OIG, were first reviewed by L before being made available for examination by the staff. Requests for copies of documents were made through L. This process was criticized as an attempt to obstruct staff investigations of the Department's contracts with IBC and others.

According to the Deputy Legal Adviser responsible for coordinating the Department's cooperation with the Iran/Contra investigations, the Secretary asked the Office of the Legal Adviser to coordinate the efforts of an Informal Working Group (IWG), which was composed of persons from a number of bureaus and was designed to facilitate all of the Department's efforts to cooperate with various law enforcement and Congressional investigations underway on Iran/Contra issues. L assumed such a role before questions were raised about the Department's activities with IBC and Frank Gomez. When such questions were raised, a judgement was made that the documents involved were likely to be requested by the Independent Counsel and the Congressional Select Committees investigating the Iran/Contra affair. He stated that the IWG adopted the same procedures it had established for other aspects of the investigation to ensure that a thorough search was made, that the chain of custody of documents was maintained as required by the independent counsel, and that documents and requests therefore were logged and arrangements made for prompt access by the various

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investigators. He stated that this role and rationale was explained in a meeting with HFAC Staff on February 26, 1987.

We believe that Department officials should place a high priority on responding to Congressional requests for information, particularly after such information has been promised by the Department. Officials dealing with Congressional representatives should be more selective in promising information and should attempt to negotiate reduced volumes of information or phased delivery. Requests should be discussed thoroughly with requesters so that redundant, boiler plate, and routine procedural information is eliminated unless absolutely necessary. Promises of information which are made should be systematically tracked to ensure that requested information is delivered and further criticism for non-responsiveness is minimized. (Recommendation 14). The specific nature and purpose of L's role (or the role of any such working group or task force) in this and similar issues should be clearly defined, documented, and communicated to affected parties at the outset. (Recommendation 15).

Comments of Department Officials

In commenting on a draft of this report, A/OPR stated that OPR/STP took the lead in trying to be responsive to the Hill and that every initiative to release information came from the Procurement Division. He added that at no time did any of the offices involved assume responsibility for a coordinated response.

H. Other Matters

1. Classification of the FY 1986 IBC Contract.

S/LPD classified its final contract with IBC as SECRET, contending to officials in OPR/STP and L that it contained sensitive information of a national security nature. However, the contract was virtually a continuation of an unclassified FY 1985 contract, except for the addition of an unclassified document distribution system. There was nothing of a national security or even a sensitive nature in the contract. In our opinion, the real reason for classification was to avoid publication in the CBD and possible challenges to the sole source contractual relationship with IBC. Most of the remaining staff of ARA/LPD, and the former officials we have contacted, now admit that classification was an error.

The improper classification created a number of other problems since IBC could not retain a copy of the contract, and the contract could not be signed until IBC obtained a facility clearance. This led to multiple technical security violations and probably added to suspicions that the classification was to cover improper dealings with IBC.

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The criteria for secret classification are contained in 5 FAM 922.1-2 which reads:

"Information may not be classified secret unless its unauthorized disclosure reasonably could be expected to cause serious damage to the national security."

The FAM also prohibits certain classification actions at 5 FAM 921.b. It provides that "Information may not be classified to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interest of national security." (emphasis added).

On August 30, 1985, S/LPD requested an extension of the FY 1985 contract with IBC to provide for services during FY 1986. The only new work requirement was for the design and implementation of a document distribution system. No mention was made that the FY 1986 services would be classified. OPR/STP informed S/LPD that the FY 1985 contract was a fixed price contract and could not be extended. In addition, OPR/STP informed S/LPD that the new contract should be publicized in the CBD and full and open competition should be obtained.

On December 4, 1985, S/LPD requested a new contract and stated that the services and contractual arrangements were to be classified SECRET and not disclosed publicly "because of their character, ingredients, and components." The justification statement submitted by S/LPD was prepared so as to appear to meet the classification requirements of the FAM. The justification stated that "publication of the general nature of the performance would be detrimental to ongoing programs under S/LPD and revelation of certain operations or allowing speculation could result in serious damage to our relations with several allies and other foreign states." In a memorandum dated February 24, 1986, the Deputy Coordinator wrote: "This is a precise definition of secret." OPR/STP returned all contract documents to S/LPD where they were subsequently stamped SECRET.

S/LPD officials informed us that they decided to classify the contract because of concerns for the safety of Central American defectors being brought to the United States by IBC for media events. They said they believed that if this activity became widely known, the safety of the defectors would be jeopardized. They acknowledged this activity was not specifically described in the contract and that the same activity had been conducted by IBC under the previous unclassified contract. In fact, S/LPD had previously contracted with the U. S. Marshals Service to provide protective services for a Central American defector. The correspondence concerning the services, invoices, and request for payment were all unclassified.

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competition. The contract extension initially proposed by S/LPD was unclassified, the statements by S/LPD officials concerning the consequences of disclosing such information are not accurate, and the safety of Central American defectors does not justify a SECRET classification.

Declassification actions of ARA/LPD also did not follow proper procedures. The declassification of the contract on January 28, 1987, in response to Senator Kerry's request for copies was not improper. The Coordinator of ARA/LPD at the time of the declassification had the authority, by succession to the Coordinator of S/LPD, to downgrade or declassify a document classified by (or by direction of) his predecessor. On January 28, 1987 he wrote at the bottom of only the original copy of the contract: "Declassified by Robt. Kagan 1/28/86." (sic). The correct date was 1/28/87. However, other copies of the document were not retrieved for declassification and holders of these copies were not notified. Also various other documents which were classified subsequent to and because the contract was classified were not declassified. On June 9, 1987, following several inquiries from OIG staff, the Coordinator properly declassified the contract and supporting documentation. We believe that the Coordinator should be instructed to follow established procedures for classifying and declassifying documents in the future. (Recommendation 16).

The improper classification created an anomalous situation: the contract could not be signed until the contractor had a facility clearance; the contractor could not have a copy of the contract; and the contractor could not be paid until the contract was signed. The classification of the contract probably also gave rise to, and later fed, allegations of improper lobbying through use of a classified contract.

Having created the problem of a classified contract with an uncleared contractor, S/LPD and IBC did not act quickly to resolve the problem. Four security investigations were begun by the Defense Investigative Service (DIS) at the request of S/LPD and ARA/LPD in 1986: February 5, April 17, May 14, and July 10. According to DIS reports the first two were terminated after IBC refused to respond to the investigators; the third was terminated when DIS learned that IBC was not a registered partnership; and the fourth resulted only in an "interim" clearance, in the tenth month of the contract, but without permission to possess classified material on the contractor's premises. IBC was finally granted a secret facility clearance on November 17, 1986, nearly two months after the contract was completed. However that clearance still did not allow the contractor to have classified information on its premises. As discussed below, we found evidence that this requirement was violated and we referred the issue to the Bureau of Diplomatic Security for appropriate action.

While the fault for failure to obtain the necessary clearance is primarily IBC's, S/LPD and ARA/LPD also share responsibility.

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contractor to continue to perform on a classified contract without a facility clearance. (See Recommendation 16).

2. Security Violations by IBC and LPD

During the course of the inquiry several potential security violations were discovered. In responding to our request, IBC's legal firm provided documents which were marked with the security classification CONFIDENTIAL. Our information indicated that the contractor did not have authority to store classified documents and neither did the legal firm. In addition, the documents had been commercially copied before they were provided to us. During our review of S/LPD files, we found a TOP SECRET document improperly stored in a bar-lock cabinet. These problems were referred to the Bureau of Diplomatic Security (DS) for investigation and appropriate action on April 9 and May 5, 1987. (See Recommendation 16).

Comments of Department Officials

In commenting on a draft of this report, the former head of S/LPD stated that the DOD detailee told him that a procurement official had suggested that the contract be classified so he assumed that this was the proper thing to do. He also described the issue of safety of the defectors which IBC was handling for S/LPD and stated that keeping this activity secret seemed to be the prudent thing to do. The current head of ARA/LPD, on the other hand, stated that the activities conducted under the contract were not classified and that the contract should not have been classified. He stated that this was part of his rationale for declassifying the contract in January 1987. A/OPR stated that new procedures are now in effect which require all classified procurements to be brought to his attention.

In our opinion, the comment regarding the procurement officials suggestion is misleading. As the situation was described to OIG staff, the suggestion was made only in response to comments of S/LPD officials that the contract contained sensitive information which should not be disclosed to the public. The suggestion was not a concurrence that the information contained in the contract was classified. Rather, it was presented as advice to S/LPD that if the information was sensitive and should be protected from the public, consideration should be given to classifying the document.

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V. RECOMMENDATIONS

1. The Department (A) should take appropriate actions to implement Department policies to ensure that program offices, including S-S/EX, ARA/EX, and ARA/LPD, are prohibited from performing the acquisition functions assigned to the contracting officers by the Federal Acquisition Regulation. Moreover, this policy should prescribe disciplinary action in those instances when a program official acts to commit the Government to contracts without the authority to make such commitments.

2. The Department (A) should direct A/OPE and A/OPR to issue instructions to OPR/STP contracting officials to reaffirm their responsibilities to adhere to the competition requirements in the Federal Acquisition Regulation. If deemed appropriate by OPE, these instructions may be provided to other contracting officials in the Department.

3. The Department (A) should direct A/OPE and A/OPR to issue instructions to the OPR/STP contracting officials to stress their responsibilities to adhere to the requirements for publicizing proposed acquisitions in the Commerce Business Daily as required by Part 5 of the Federal Acquisition Regulation. If deemed appropriate by OPE, these instructions may be provided to other contracting officials in the Department.

4. The Department (A) should direct A/OPE and A/OPR to issue instructions to the OPR/STP contracting officials to stress their responsibilities to adhere to the small purchasing procedures in Part 13 of the Federal Acquisition Regulation. Specific instructions should be given to OPR/STP officials to detect and eliminate split requirements proposed by program officials.

5. The Department (A) should direct A/OPE and A/OPR to issue instructions to the OPR/STP contracting officials to define the preaward and postaward contract administration functions they are to perform. Moreover, OPE should conduct a random review of OPR/STP contracts during early FY 1988 to determine if the instructions are being followed by the OPR/STP contracting officials.

6. The Department (A) should direct A/OPE and A/OPR to issue instructions on the use of contract audit services for both preaward and postaward contract actions. Moreover, OPE should conduct a random review of OPR/STP contracts in early FY 1988 to determine if the instructions are being followed by the OPR/STP contracting officials.

7. The Department (A/OPE in coordination with M and A) should take the actions necessary to implement an effective acquisition planning program within the Department as required by Part 7 of the Federal Acquisition Regulation. Moreover, OPE should review the results of the planning system in early FY 1988 to determine if it is achieving the desired results.

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8. The Department (A/OPE) should complete the actions necessary to finalize the Department of State Acquisition Regulation as expeditiously as possible.

9. The Department (A/OPE) should review the current delegation of procurement authority issued to the Foreign Service Institute (M/FSI) and determine whether it needs to be modified to preclude the use of the Registrar's authority to issue training orders for persons outside the Department using funds that are not M/FSI funds..

10. The Department (M/FSI) should take immediate action to recover funds from International Business Communications (IBC) for nonperformance of services under Training Order No. 1001-402486.

11. The Department (ARA/EX) should instruct ARA/LPD to prepare purchase requirements in sufficient detail to allow OPR/STP to structure definitive, quantifiable, statements of work which identify deliverables and delivery dates.

12. The Department (A/OPR) should direct OPR/STP to reject purchase requirements which lack sufficient detail to develop definitive, quantifiable statements of work.

13. The Department (H and PA) should instruct all Department offices, including ARA and L, to exercise more care to insure the accuracy and completeness of information provided for Congressional requesters and press guidance.

14. The Department (H) should modify instructions for use by Department offices and officials in dealing with Congressional requesters. Such instructions should address informal or verbal requests and should include the need to:

- place a high priority on responding to Congressional requests, particularly after information has been promised,
- thoroughly discuss, define, delimit, and document the information needed to respond to the request,
- obtain a written request for the information, if possible, and
- periodically follow-up on commitments to provide information, to insure that requests do not remain open for excessively long periods.

15. The Department (H in coordination with L and S/S), when it is desirable to designate L (or any other working group or task force) as a focal point for receiving and responding to requests for information on a particular subject, should describe the nature and purpose of the arrangement in writing and communicate

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it to affected parties, particularly those in the Congress, at the outset.

16. The Department (DS and ARA) should require that the Coordinator and staff of ARA/LPD familiarize themselves with the Department's security regulations and adhere strictly to the classification, declassification, and physical protection requirements of 5 FAM 920, 930, 940, 950, 960, and 970.

LISTING OF OFFICIALS INVOLVED IN
EACH CONTRACT

<u>Order/Contract No.</u>	<u>Officials Involved</u>
1001-402214 Awarded to: Mr. Gomez	- O. Reich, S/LPD (Requested Order) J. Miller, S/LPD (Liaison Officer)*
1001-402296 Awarded to: Mr. Gomez.	- O. Reich, S/LPD (Requested Order) J. Miller, S/LPD (Liaison Officer)* S. Canady, OPR/STP (Signed Order)
1001-502074 Awarded to: IBC	- J. Miller, S/LPD (Requested Order) (Liaison Officer)* S. Canady, OPR/STP (Signed Order)
1001-502356 Awarded to: INSI	- F. Gardner, S/LPD (Requested Order) (COTR) R. Green, OPR/STP (Signed Order)
1001-402486 Awarded to: IBC.	- O. Reich, S/LPD (Requested Order) J. Miller, S/LPD (COTR) A. Edwards M/FSI (Signed Training Order)
1001-502160 Awarded to: IBC.	- F. Gardner, S/LPD (Requested Contract) (COTR) J. Miller, S/LPD (Proposed as COTR but not designated) J. Handrahan, OPR/STP (Negotiated Contract) B. Garland, OPR/STP (Signed Contract)
1001-602066 Awarded to: IBC	- O. Reich, S/LPD (Requested Contract from S/S-EX) F. Gardner, S/LPD (Requested Contract from OPR/STP) R. Kagan, S/LPD (COTR) J. Blacken, S/LPD (Designated as COTR by S/LPD, not named as COTR due to rotation) L. Berryhill, OPR/STP (Negotiated Contract) B. Garland, OPR/STP (Signed Contract) J. Conway, A/OPE (Ratified S/LPD Actions)

*NOTE: No Contracting Officer's Technical Representative (COTR) was designated on the purchase orders. Instead, a Liaison Officer was designated.

EXHIBIT A

KEY PROGRAM AND PROCUREMENT OFFICIALS
INVOLVED IN CONTRACTS WITH IBC AND ITS PRINCIPALS

<u>STAFFING OF KEY POSITIONS IN S/LPD (ARA/LPD) 1984-1987</u>	
<u>Position</u>	<u>1984 1985 1986 1987</u>
Coordinator	Otto J. Reich (STATE) Otto J. Reich (to 1/86) Robert W. Kagan
Deputy Coordinator	John D. Blacken (STATE) John D. Blacken (to 5/86) Cresencio Arcos (USIA)
Deputy Coordinator	Johnathan S. Miller (STATE) John Scafe, Acting (USIA) Daniel Fisk (STATE)
Administrative Officer	Vacant Francis Gardner (STATE) Thomas F. Calhoun (to 12/86) Vacant (Daniel Fisk, Acting)
	Matthew Freedman (USAID) Daniel Jacobowitz (DOD)(9/85 - 12/85) Thomas F. Calhoun (STATE)(from 12/85)
<u>STAFFING OF KEY PROCUREMENT POSITIONS 1984 - 1987</u>	
Procurement Division Chief	John Conway John Conway (to 6/85) Barbara A. Garland, Acting, (to 4/86)
	Joseph W. Globe, Acting (to 10/85) Barbara A. Garland, Acting (from 10/85) Robert B. Dickinson (from 4/86)
Procurement Executive	John Conway, Acting John Conway, Acting (from 2/86) John Conway

Exhibit B - Memorandum from Former Coordinator
of S/LPD dated July 17, 1987



United States Department of State

Washington, D.C. 20520

July 17, 1987

MEMORANDUM

TO: OIG/AUD - Lynn W. Burgener
FROM: Ambassador Otto J. Reich *OR*
SUBJECT: Draft Report--Special Inquiry into the
 Department's Contracts with International
 Business Communications (IBC)

The following are my comments on the draft report; I can only address myself to those management decisions over which I had an impact at S/LPD. Several of the allegations concerning Department procedures occurred after I left S/LPD and many do not apply to S/LPD.

I will begin with Page 14 on the report, which is where the main text starts.

Page 14, IV, Para A. I wish to take issue with the statement that "the need for the purchase orders and contracts may have been justifiable in the beginning but was questionable in the later periods as S/LPD's in-house staff grew and gained experience." This judgment is subjective and erroneous, and frankly, constitutes second-guessing. The purchase orders and contracts for outside assistance were as justifiable as the staff grew as they were at the beginning, because the demands on the office grew geometrically while the staff grew arithmetically. As the office became more and more a reliable source of information for members of the executive branch--including the President, the Vice President, the Secretaries of State and Defense, the Director of Central Intelligence--the Congress, the media, and other audiences; demands on this office increased. In the "later periods" the S/LPD staff was just as busy as it had been at the beginning. The enormous amount of product which was demanded and received by our audiences caused our staff to work extremely long hours and every weekend. In fact the IBC contract which first drew the attention of the Congress and the press and which caused this IG report

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to be undertaken, was a result of the inability of the State Department to properly distribute the voluminous amount of S/LPD materials satisfactorily to audiences in the executive and legislative branches as well outside of government.

I would like to add at this point that one of the principal objectives of the office from the very first day was to help re-establish the credibility of the Administration's information. When the office was created, a number of Members of Congress and the media were publicly questioning the credibility of the Administration. I am very proud to say that in two and a half years of producing scores of documents, speeches, briefings, issues papers and other materials, not one factual error or mistake was made in S/LPD materials. In April of 1985 Secretary Shultz told me that, in his opinion, S/LPD had done "a superlative, an outstanding" job. This sentiment about the office was not a result of carelessness or lack of attention to detail. It is very easy to second-guess the actions of an executive, whether in the government or the private sector, two years after the fact. But the reader should put himself in the position in which the Administration found itself in the summer of 1983, when banner headlines in the press too often distorted or misrepresented the facts of reality in Central America and of the policy of the United States designed to deal with the crisis (as the President correctly called it) in that region of the world. The "urgency" never passed, at least as far as the President of the United States and his senior advisors were concerned. In fact, even after I had already left for Venezuela and taken over my duties as Ambassador, the President continued to use S/LPD products in his successful battle to obtain Congressional support for his Central American policy.

There is a factual error (in the second paragraph of page 10 and again on page 14) which states "Coordinator Reich came to State in December 1983...." Actually, I began the public diplomacy activities on July 5, 1983, immediately upon public announcement of the establishment of the office. The Office had been established, as the report states on July 1, 1983, but I had been designated at a meeting of the National Security Council on June 21, 1983. [The possible reason for the confusion in the dates may stem from the fact that from July to December 1983 I was still on the AID payroll and in effect working on detail from AID to State.] The report is completely correct however, when it states that "lacking adequate staff, Mr. Reich obtained permission to contract for a

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short-term professional services contract in February 1984 with Frank Gomez....." I believe it is important to state (in fact, it cannot be overstated) how much this office was lacking not only in adequate staff, but in adequate resources of all kinds. As I told the IG Team, I personally had to ask constantly for resources for what was supposed to be a Presidential initiative. It took months for S/LPD to obtain its own office space, telephones, typewriters, staff, and all the other support necessary to carry out its function.

One very important element related to inadequate resources, which had direct bearing on the subject of this inquiry, was my constant request for an administrative officer from the State Department to be assigned to S/LPD to assist us in all administrative matters. This included--and I remember repeatedly mentioning this as an example of why we needed such administrative support--supervision of our outside contracts (e.g., IBC). It took over a year from the time that the office was established for a State Department administrative expert to be assigned to S/LPD. Even then, we had only what amounted to "TDY" personnel as we changed administrative officers frequently because of other priorities of the Department. In fact, over two years after the establishment of the office, I personally requested the Director General of the Foreign Service to please see if he could identify an experienced person to fill the again empty administrative slot in S/LPD. This was after a two-month gap in that position in the fall of 1985. This timing is very important and bears elaboration because it is precisely during this period in 1985 when S/LPD had no State Department administrative officer assigned to it, that the IBC contract in question (the one which is allegedly erroneously classified) was negotiated. Because of the lack of administrative support, I had to turn to a Department of Defense detailee, an active duty military officer, to help me with administrative matters. This officer was an extremely hard-working and conscientious individual but he had absolutely no knowledge of State Department procedures, much less contracting. However, I had no choice but to turn to him as I had already been designated as Ambassador to Venezuela and was trying to focus on my ongoing assignment, while still trying to keep the office in operation. In fact, it was on a trip to Quito, Ecuador, in October of 1985 to attend the Andean Chiefs of Mission Conference in anticipation of my future Ambassadorial assignment that I requested the Director General of the Foreign Service to find S/LPD an administrative officer. I told the Director General that

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I wanted to leave S/LPD in the best possible management condition. Immediately upon his return to Washington, the Director General did find us an administrative officer, but this person could not be detached from his assignment until six weeks later (December 1985). In effect, therefore, we were without administrative support for another crucial period. It can be argued that the inability of the Department to provide S/LPD with such help was an important contributing factor to any irregularities which may have occurred in the handling of the IBC relationship. I think it is a very telling commentary on the Department's priorities that one and a half years later (1987) approximately half a dozen experienced State Department auditors were found to look into the contract. These individuals spent a total of approximately two to three months looking into this relationship. Had we had just one of these capable and knowledgeable individuals assisting us with our contracting procedures in S/LPD in 1984 and 1985, perhaps the American taxpayer would have been spared the need for, and saved the cost of, this investigation.

Going back to the Report itself, on page 12, third paragraph, it is stated that "in January 1985 the coordinator of S/LPD was nominated as Ambassador to Venezuela and withdrew from active leadership of S/LPD." This is not correct. It would be correct to state that I withdrew completely from active leadership of S/LPD at that time. I had indications since May of 1985 that I was going to be nominated as Ambassador to Venezuela. In August of 1985, President Reagan signed the internal memorandum approving my nomination and requesting FBI and other clearances. In early December of 1985 I received the call from the President officially requesting that I take the job of Ambassador. The last step, in January 1986, was the public nomination of the Ambassadorship and the transmittal of the nomination papers to the Congress. At that time, I withdrew completely from S/LPD leadership and concentrated full time on my confirmation hearings and in continuing to prepare for the Ambassadorship (something which I had already begun to do, concurrently with my S/LPD duties, in the summer of 1985).

On page 16, the report states that the criteria for a sole source contract with Frank Gomez appeared to be weak though justifiable at first. As the report itself states on page 15, I was not familiar with State Department regulations and I relied entirely on the advice I received--usually through someone on my staff--from the contracting office at State. When Frank Gomez appeared on

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the scene, I was told--repeatedly--that sole source contracts "were done all the time" and were perfectly legal. The report also seems to question why Frank Gomez received a series of short-term contracts. There appears to be a contradiction here, in that a sole source contract was initially justifiable but not later, as Mr. Gomez proved himself capable of doing the job even better. I would like to reiterate what the report states, and that is, that I did not know Frank Gomez until I took over S/LPD. When he became available in early 1984, I had no knowledge of how he would be able to perform for us. Therefore, I thought that the prudent thing to do from a management standpoint was to try out Mr. Gomez for a short period of time. I was very impressed with his performance and extended the contract for another three months, and, as the report states we continued increasing his activities, as well as his remuneration, in subsequent contracts. Borrowing from some of the hindsight so abundant in this investigation, we could ask whether S/LPD's initial contract with Mr. Gomez should have been for one year, thus avoiding the present aggravation of having to explain three consecutive short-term contracts; would that have been justifiable?

On page 17, the report states that by FY 86, S/LPD had nine State Department and ten other agency personnel and that, therefore, by that point the original justification for outside assistance as no longer valid. This is another example of Monday morning quarterbacking. In FY 86, the demands on the office far exceeded the office's capabilities. On many occasions, we had personnel working until one o'clock in the morning and through entire weekends, something that is not common procedure in the State Department, even though it is one of the hardest working of all executive departments. I simply could not justify continuing to demand that kind of performance from my staff forever. If anyone questions those statements, all they have to do is interview any and all of the S/LPD staff to determine what the working hours were. Additional evidence is available from the overtime requests for secretaries. It is very easy now for people totally unfamiliar with the demands on this office and the working conditions prevalent at that time to make the statement that "outside assistance" was no longer justified. In fact, it was probably even more justified in 1985 than it had been in 1983 since we did not know at the beginning exactly what the demands on the office were going to be. Moreover, the last contract for IBC, most of which was for distribution of S/LPD publications, was made necessary by the enormous amount of material which the

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office was producing. The materials were simply not getting into the hands of the people who needed to have them. The Administration continued to be criticized by officials in the Congress, the public, and even the press about the lack of effectiveness in "telling its side of the story on Central America." Having contacted the Bureau of Public Affairs, and having examined all of the available avenues open to us to distribute the Department's publications, I came to the conclusion, with the assistance of other State Department officials, that the most efficient method open to us was to seek and outside source of distribution services. I was told this requirement could be added to the IBC contract. Once again, I had to assume that the information I was receiving from the Department's experts was correct especially since, as the report itself indicates, we were not told otherwise.

The second paragraph on page 17 is not entirely correct. It states "when the leadership of S/LPD changed in mid-1986, the new coordinator came to the same conclusion and decided to stop contracting with IBC at the end of the FY 86 contract and to perform the work in-house." I recall that prior to my departure for Venezuela, I had met with the new S/LPD coordinator and among other things told him that I thought that the IBC contract was simply taking too long to negotiate (it was indeed not concluded until September 1986) and that I felt that he should find some other way to get the job done. This was not a reflection of IBC's ability to do the job, it is more a reflection of the frustration with the contracting procedures. I was not aware at that time of the reason for the the difficulties with IBC, and in fact, have only become aware of all of them by reading this report. I did know, however, that if they were ever going to get the job done of getting the material distributed, and since the IBC contract was taking so long, that the Department had to find some other way to do it.

Page 19. For each example which is listed on this page as evidence that S/LPD "abused" the process, I have to respond that I asked, at every opportunity, whether the recommendation that was being made to me, by whichever person was monitoring the contract and dealing with the contracting office, was legal and standard procedure. At every step I received the reply that this was standard procedure and completely legal and "done all the time." The example of acquisition activities listed on page 21-22 of the report was thought by me at the time to be completely normal. I had no reason to believe otherwise

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since, as the report itself indicates, "the OPR/STP contracting offices did not challenge the S/LPD actions as unauthorized commitments." How am I supposed to know, when I am attempting to run what was later described by seventh floor principals as one of the most productive offices in the State Department, that the office upon which we were relying for contracting advice and assistance had, in the words quoted in the report, "failed to do their job?"

On page 23 the report states that the sole source acquisitions were not justified. I believe this is partially second guessing, but also that S/LPD was let down once again by the experts in the Department. On "sole source" as well as the other aspects of these acquisitions, I was told that "this was done all the time" and that I had no reason to believe that our recommendations were inadequate or were not justified. Since none of these contracts were rejected by the contracting office, I had to assume they were adequate and proper.

I would argue with the tone of pages 24-25 in that there appears to be a question about Frank Gomez' ability to qualify for a sole source contract. Considering the condition of S/LPD staff at that time, and the demands upon the office, someone with Mr. Gomez' background was practically made to order.

On page 36 there begins a discussion of whether or not some of the contract amounts constituted a "fair and reasonable" price. It is very difficult to determine just exactly what price to put on the credibility of USG officials. It is therefore very difficult to put a price on the ability of an individual or a corporation to assist the USG and its highest officials to obtain understanding and support for a particular policy, (the success of which may in fact event a major foreign policy disaster). I mention the above to attempt to put the pricing issue in its proper perspective. For example, in 1981, (long before the establishment of S/LPD) the State Department, in an attempt to prove the fact that the Salvadoran guerrillas were receiving support and assistance from Nicaragua, issued a so-called "White Paper" which reported extensively on the evidence of Nicaraguan support for the Salvadoran guerrillas. In their continuing effort to discredit the Administration's policy, some members of the national media found minor errors in the multi-page 1981 report. Immediately thereafter, in order to support their own effort, they began to call it "the discredited White

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Paper." This was a very embarrassing incident to the U.S. government. It took approximately two years to overcome the damage to the credibility of the Administration in the Congress and the press regarding what everyone now knows to be the overwhelming evidence of Nicaraguan support for the Salvadoran guerrillas during that and subsequent time periods. (The Congress of the United States in 1985, in order to end this discussion once and for all included language into legislation which states that it is the opinion of the Congress that Nicaraguan support for the Salvadoran guerrillas is indeed true). When S/LPD was created, the experience of the so-called "White Paper" was still very fresh on everyone's mind. One of the very important areas in which Mr. Gomez assisted us was in insuring accuracy in some of the papers as well as in bringing to us unclassified materials which could be included in such papers. Some people may consider those services to be relatively inexpensive. It is certainly inexpensive when one considers the cost to the Government of the United States of having its statements constantly questioned by friend and foe alike.

There is another aspect of Frank Gomez' work which has an impact on pricing. Gomez was helping us to deal with defectors from Central America whose lives had been threatened by the government of Nicaragua and by the Communist guerrillas in El Salvador. He handled, very effectively, I must add, a number of those defectors. He helped us with the physical care and feeding of these human beings who found themselves in a totally strange country and whom in no case spoke English; they did not have any contacts in the United States, nor any knowledge of how to even get around. I believe this would be an appropriate time for me to comment on the haphazard way in which the United States too often handles defectors. It is no surprise that the U.S. Government has been embarrassed by cases such as that of the Soviet KGB defector Yuriy Yurchenko who redefected to the Soviet Union in early 1986, three months after his defection to the U.S. In 1982, one year before S/LPD was created, the U.S. Government suffered another major embarrassment when a Nicaraguan who had been captured in El Salvador fighting with the Marxist guerrillas was brought to Washington by high State Department officials in order to re-tell the story which he had told the Salvadoran authorities of his training in Cuba and Nicaragua as well as his insertion into the Salvadoran conflict by the Nicaraguan government. This captured Nicaraguan, whose last name was Tardencillas, changed his story when he was put on U.S. national television and said that he had been "tortured".

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and "forced" to tell a lie and that he had never been trained by the Cubans or Nicaraguans. We know now (and knew then) that Tardencillas was lying in this latter version of his story. But the damage to the credibility of the USG around the world had already been done. Tardencillas was returned to Nicaragua and it took approximately a year to live that episode down. I am proud to say that never in the two and a half years in which I headed S/LPD, did we have an incident with defectors. Can someone put a price on that? We took pains to prevent such incidents with our in-house staff, but on occasion Frank Gomez helped us screen defectors to make sure that they were not "plants" or foreign agents. Under S/LPD's management of defectors, there were many requests for them from several members of Congress, including the then Chairman of the Senate Intelligence Committee, David Durenburger of Minnesota.

The report says that "although deliverables were vaguely defined and reported, the performance by Frank Gomez and IBC on all other purchase orders and contracts was approved, accepted, and frequently applauded by S/LPD officials." I would go even further. I would say that we "enthusiastically" applauded Frank Gomez' performance. As I told the IG team investigating this relationship, I believe that Mr. Gomez performed exceptionally well for the USG almost without exception. The question we have to ask ourselves when dealing with contracts such as this one is: How does one determine the real value to the U.S. Government of, for example, something as "vaguely definable" as re-establishing credibility? Or of avoiding a repetition of the "White Paper" or the Tardencillas incident?

Classification of the FY 86 IBC contract. I would like to set forth my version of why the FY 86 IBC contract was classified secret. At some point in the fall of 1985 to the best of my recollection, the military detailee who had been acting as liaison with the rest of the Department on S/LPD contracts, told me that it had been suggested to him by a Department official that the contract be classified. Knowing that he was in constant communication with the contracting office and other entities of the Department trying to get this contract approved, I naturally assumed that this was the proper thing to do. In 1987, in response to questions from the IG and the GAO, I stated that I had probably given the go ahead for the classification for that contract. I have no evidence to the contrary even today. That is, that I probably did tell the officer to go ahead and to through channels to

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get the contract classified. The IG report states that there was no justification for that classification. I believe that does not take into account the circumstances. As I mentioned earlier, IBC was dealing with defectors on behalf of S/LPD, and keeping that relationship secret seemed to be a prudent thing to do.

Although IBC had been handling such defectors from practically the onset of its relationship with S/LPD, in the summer or fall of 1985 we received indications that at least one of the defectors whom we were handling, Mr. Alvaro Baldizon, was under a death threat from the government of Nicaragua. (Baldizon's brother was "arrested" in Nicaragua immediately after the defection, disappeared, and is presumed dead). We had been advised that there might be a hit squad in the U.S. sent by the government of Nicaragua to assassinate Baldizon. I therefore requested protection for Mr. Baldizon from the U.S. Marshals. They provided this service but, much to our surprise, proceeded to charge the Department of State at the rate of approximately \$8,000 a week for round-the-clock protection for Mr. Baldizon. I received a call from S/S-EX stating that we should sever the contract with the U.S. Marshals because the Department simply "could not afford it," that the Department did not have the funds to provide that kind of expensive protection for Mr. Baldizon. At that point, one could say that S/LPD was really in a bind. On the one hand, a defector had trusted his life to the USG and on the other hand, the Department, in effect, washed its hand of this individual. We have to understand that when people trust their lives to the USG, we have a moral responsibility and cannot discard that responsibility simply because the U.S. Marshals decide to charge \$8,000 a week to guard that person. At any rate, when the Department told me to sever the relationship with the U.S. Marshals, I asked Frank Gomez if he could help take care of Mr. Baldizon. Mr. Gomez said that he could, and as a precaution, proceeded to move Mr. Baldizon around the Washington area from hotel to hotel as well as to feed him and take care of his basic human needs. Earlier, we discussed the matter of what constitutes appropriate pricing for a contract such as this. I would be very interested in knowing how much the services provided by Mr. Gomez on behalf of the Department of State, in taking care of a politically sensitive defector with a price on his head are worth to the USG. If the security alone for such an individual is worth \$8,000 a week (or \$416,000 a year), then was the contract that was being negotiated with IBC for approximately \$10,000 a month (in addition to the distribution services) adequate or appropriate?

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I object to, and disagree with, the characterization of the statement on page 69 of the report that the reason for classification for the contract was "to restrain competition." I do not believe that was the reason why the contract was classified; I have stated why I believe the contract was classified. I believe that if the information we had received about Mr. Baldizon was correct, that is, that he was under threat of assassination, and if that assassination had been successfully carried out while he was in our custody, that that would have caused serious damage to our nation. Defectors are the repository of a great deal of very valuable information which often impacts on our national security. If we cannot care for these people, then other potential defectors, who may have even more valuable information, would probably, human nature being what it is, at least think twice if not actually change their minds, about defecting to the U.S. If I may add my own unofficial recommendation to this report, it is that the USG establish a better system than presently exists for dealing with defectors that includes not only their physical but also their emotional and spiritual needs. I would be curious as to how many IG or Congressional investigations would have been launched had a successful assassination been carried out against one of the defectors which S/LPD was caring for or "handling." Would there have been an outcry from some of the same staff or members of Congress who are quick to criticize the Administration for the IBC contract? Would they have been quick to criticize the Administration for not being able to take care of defectors?

Page 44, paragraph 2. The allegation regarding the training order placed through FSI was a surprise to me. I was under the impression that the training described in the order had indeed taken place. I will be interested in knowing if there is a plausible explanation of this case. In the meanwhile, I fully agree with the two recommendations of the IG report on this issue. I had never heard of a "self-certification" system of payment and find it inadequate. I would like to point out, however, that this event also occurred at a time when S/LPD had no administrative support. Our aid detailee who was handling this contract (and all other administrative matters) left in late August 1984 and was not replaced for several months. This obviously contributed to the confusion on this contract. One additional factor which may be relevant: it bears remembering that S/LPD did not deal with "normal" issues. In this particular instance,

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for example, the principal counterpart in the government of El Salvador with whom Mr. Gomez dealt, a Lieutenant Colonel Cienfuegos, was assassinated by the communist guerrillas just six months after the time in question (March 1985). The opinion of both USG and Salvadoran experts at that time was that the guerrillas had killed LTC Cienfuegos precisely because he, and his office, had become too effective in dealing with the international press. Their response was to shoot him through the head and drape him with a red flag with the guerrilla movement's initial on it. As I said, this may or may not be relevant, but that is the environment in which we operated.

Page 53, Para D: Lobbying activities. The first paragraph appears to be contradictory. The first sentence states that "although allegations were widespread, there is no evidence that S/LPD staff or IBC personnel contracted with the Department participated directly in any unlawful lobbying." I agree with that. The next sentence states "there is considerable evidence, however, that S/LPD conducted and participated in activities which came close to prohibited categories, and were interpreted as illegal by some observers." I do not understand who these anonymous "observers" are and why their "interpretation" should have any weight in this report. I believe this last sentence should be struck. As the report indicates, the Department of Justice looked at the allegations and found that the activities of S/LPD were lawful. The opinions of the unnamed observers are, therefore, irrelevant.

The report also states that "while S/LPD did not violate the lobbying statute, there is considerable evidence, however, that activities were carried out which are very close to the line between authorized informing and unauthorized attempting to influence." I object to this statement because there is absolutely nothing wrong with coming "very close to the line." I do not know which "line" this report is talking about, but if that "line" is the law then it should be very clearly stated that S/LPD's activities were all within that law. As the report itself indicates, S/LPD management went to great pains to ensure that all our activities were within the statutes.

The report then goes on to say something very strange: "Among other things the S/LPD coordinator and staff travelled and spoke extensively on the merits of the Administration's Central American Policy." I really do not understand what this statement is doing in this

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report. State Department officials constantly travel and speak throughout the country on the merits of any Administration's foreign policies and there is nothing wrong with that. In fact, there is an entire bureau (the Bureau of Public Affairs) designed to organize such travel and speaking engagements. That statement is confusing and gives the wrong impression.

Perhaps this would be a good time to point out that one of the reasons why S/LPD was created at such a high level (the National Security Council) was because, in the opinion of the highest policy makers of the USG, the State Department was simply not performing satisfactorily in communicating to the American people the Administration's policy objectives in Central America. The Bureau of Public Affairs at the State Department and other Executive departments were simply overwhelmed with requests for speakers and other materials on the Central America policy. I was informed when the office was created that the President, the Vice President, and others were, to say the least, very upset with the inability of the Executive Branch to publicly communicate to the American people what the USG was trying to do in Central America. In subsequent conversations with the President, the Vice President, and a number of Cabinet Secretaries, I was able to personally confirm that sentiment.

The report states that S/LPD "subsidized" publications supporting the President's Central American policies. This is a very strange statement. We not only "subsidized" publications, we confess to paying for them. This was clearly within our mandate and within the law. It is also something which the Department does regularly and for which there is great public demand. If the United States Government cannot communicate directly with the American people, we are in very serious trouble because many major media are no longer a reliable source of information on issues such as Central America. One reality, however, is that the press always has the last word on any debate. (As I am sure it will have on the subject of this report.)

In addition, I would like to point out that, according to law and established practice, S/LPD's activities that pertained to the Congress were done in response to requests to members of Congress or coordinated through the Department of State's Office of Congressional Relations or the White House or NSC congressional relations.

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On pages 56 and 57, an example is given of what is called "evidence that LPD participated in a group with other organizations which conducted activities which LPD would have been prohibited from performing." I will state again what I stated to the IG Team: This example is irrelevant. The paper from which this example is taken was not prepared by anyone in S/LPD nor, in my opinion, by anyone in the Department of State. It was probably one of the literally hundreds of papers which S/LPD staff picked up at the hundreds of meetings which were attended by the staff outside the Department over a period of two and a half years. I do not know who prepared this particular paper, but the inclusion of these examples in this report may give the reader the impression that S/LPD in some way condoned or coordinated the activities listed.

Finally, I would like to point out two things on behalf of the "senior military advisor" who is alleged to have committed an unethical act. First, he was not the executive officer from June 1985 to June 1986, but rather only from September 1985. This is important because he was not in a position, as the report states, to "influence" S/LPD's decision to contract for the services of his sister. Second, from the very outset, he disclosed the kinship and separated himself from management decisions affecting his sister. There is enough character assassination taking place in Washington right now without the Department unnecessarily participating in any.

Conclusion: S/LPD was created largely in response to criticism in the Congress and the media that the Administration was not "leveling" with the American people on Central America; that the Administration was either not telling the truth or did not have the facts to back up its principal contentions about the crisis in the region. Very often, when Administration officials would testify before Congress or speak to the press, they would have to fall back upon the true but inadequate excuse that "that is classified and I cannot share it with you." After a while, even reasonable people tend to believe that is a cover-up for lack of information, rather than an effort to protect sources and methods. When S/LPD was created, one of the first tasks that it undertook was an attempt to work with the intelligence community to declassify the enormous amount of intelligence available and which did prove we were being truthful. This task was accomplished due to the cooperation of almost all (there were some notoriously tight-fisted ones) members of the intelligence community. It should also be pointed out that S/LPD was an experimental program. It was the first and for almost

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two years after its inception the only Office of Public Diplomacy in the State Department (or the Executive Branch). As a result much of what the office did was brand new and did not have precedent. The three principal areas in which it operated were (1) information gathering, (2) information processing, and (3) information dissemination. In each one of these areas I believe that we broke new ground, such as for example, in enhancing cooperation with the intelligence community for accelerated declassification of information; or by obtaining unclassified information which corroborated classified information which could not be declassified because of the source or method of acquisition; or by attempting to ensure that the information available to the executive branch was also available to Members of Congress, members of the press, and as much of the public as was interested in that information. It was this last effort at distribution which the final IBC contract attempted deal with. The bulk of the IBC FY 86 contract was for distribution services. It must be reiterated that that is not the reason why the contract was classified; as we know, the contract was classified because among the other services at IBC was the handling of defectors from Central America, some of whom had a price on their head.

There are many cases when S/LPD was the only source of unclassified information available to policy makers. For example, at a press conference in the summer of 1984 President Reagan personally highlighted the S/LPD publication "Nicaraguan Military Buildup and Support for Subversion." It goes without saying that for the President of the United States to use one of the first major projects a brand new office, and which had been completed in just a few months, was a great source of pride and satisfaction to the staff and it encouraged us to continue our efforts. In addition, there were other instances when, as S/LPD products became more and more sophisticated and relied upon, that there were additional demands upon the office. For example, there came a time in 1985 when a very high level Cabinet official asked for a particular unclassified chronology of Nicaraguan incursions into Honduras and Costa Rica. Incredibly enough, we found that S/LPD was the only office in the Executive Branch which had prepared such an unclassified chronology dating back to the very first week of the Sandinista takeover of Nicaragua in 1979. There were many instances such as this in which very high ranking (as well as other) members of the Executive Branch and the Congress came to rely on the Office of Public Diplomacy. In most

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cases, we simply provided the information to an intermediary office or bureau of the Department or the White House for transmittal to the end users. It should also be pointed out that this was accomplished with one of the smallest budgets of any such office in the executive branch and also one of the smallest staffs. As the IG report indicates, we had approximately \$750,000 per year, not an exorbitant amount if we believe that the American people have a right to know what its government is doing. In fact, it is only a fraction of the cost of what the Iran-Contra investigation is costing, and for the same reason: because "the people have a right to know."

I accept responsibility for that which is my fault. I was in charge of the office and if there were any technical violations, then they happened on my watch. But I was given to believe that there was an entire team of experienced contracting, legal, administrative, and other officers supporting my office. It is not coincidental that the principal issue in the investigation, the contracting procedures and classification of the final IBC contract, happened precisely during a period of three months in which our office did not have a single State Department administrative officer assigned even though I had constantly requested one. It was during this period of September to December 1985 when I had to rely on an active duty military officer on detail to the State Department to help me try to untangle the jumble of regulations concerning contracts. This was not fair to a military officer with no experience in State, performing a job for which he was not trained and which he did not expect to do when he was assigned to the Department of State.

Although S/LPD was indeed one of the smallest offices in the Department, it was also one of the most productive. At least that was the opinion of the Secretary of State as expressed to me on the 30th of April 1985, when he offered me a promotion based on my performance for the previous twenty-two months as Coordinator for Public Diplomacy.

This was also the position, as expressed to me by other Seventh Floor principals, two U.S. Permanent Representatives to the United Nations; the late Director of Central Intelligence Mr. William Casey; the Vice President of the United States; a number of Senators and Congressmen; U.S. Ambassadors to Latin American and European countries; three advisors to the President for National Security Affairs; a number of superiors,

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colleagues, and private sector people whose opinions I value; and finally, the President of the United States on the 16th of May 1986, as I departed Washington to assume my duties as Ambassador to Venezuela. In fact, if S/LPD's experience is any indication, I believe that the taxpayer will be well served by reducing the number of personnel in many large Executive Branch offices and having them become more cost effective and productive. I realize of course that that recommendation is not feasible in every case, but the productivity of the interagency personnel in S/LPD is a testimony to the dedication and professionalism of career and non-career government officials and secretaries, who worked tirelessly and in many cases around the clock to perform a duty which they had been told and knew to be a high Presidential priority.

Other than the fact that, with the benefit of the hindsight which this report provides, I am now aware that I should have paid more attention to the lack of support we were getting from the rest of the Department, I have absolutely no regrets about my management of S/LPD.

Exhibit C - Memorandum from Coordinator
of ARA/LPD dated June 25, 1987

United States Department of State

Washington, D.C. 20520

June 25, 1987



MEMORANDUM

TO: OIG/AUD - Lynn W. Burgener
FROM: ARA - Robert W. Kagan *RW*
SUBJECT: Comments on IG Draft Report on IBC Contracts

While ARA/LPD generally finds the draft report to be fair and balanced in its findings relative to Department contracts with IBC, et al, there are several areas which require comment.

Classification and Sole Source Procurement Without Proper Justification. On page 2, and in other references throughout the report with regard to classification of the FY 86 contract and the sole source justification of other contracts/purchase orders, the report states that the contract was improperly classified "without justification." This implies that no justification was submitted, which was not the case. Justification of the proposed classification and sole source statements were provided and were not challenged by contracting personnel. Recommend that references be changed to indicate that classification and some sole source requests were approved "without adequate justification" rather than implying that no justification was submitted.

Staffing. The report discusses the use of purchase orders to obtain short-term expertise and personnel when the office was first being formed. In pursuing the logic trail of this decision on page 16, the report states that the personnel system was not capable of providing sufficient talent "in time to meet the Coordinator's perceived (emphasis added) urgency." The use of "perceived" indicates that urgency existed only in the mind of the Coordinator. Ambassador Reich was selected to establish a new office in order to work one of the Administration's top foreign policy issues. He could not hope to accomplish his job without an adequate staff. Recommend that statement be changed to read, "the needed specialized talent in a timely manner."

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Lobbying. On pages 3 and 4 and on pages 53 and 54, the report states that LPD did not participate in lobbying activities but that it often operated "close to the line" between authorized "informing" and unauthorized "attempting to influence." Specific reference is made to the extensive travel and speaking engagements of the Coordinator and his staff. While not so stating, the report seems to imply that such speaking engagements may have been a questionable activity. We do not believe this to be the case. The office was founded because public opinion polls showed that the public did not understand Central American issues and events nor did they understand U.S. interests and policies in the region. The major focus of LPD has been to inform the public in the belief that a public which is well-informed and follows the issues will support the policy. One of Ambassador Reich's major objectives was to increase public awareness of the significant foreign policy issues in Central America and to raise the level of public debate on those issues. Ambassador Reich and his staff became recognized as respected, authoritative sources who were sought after by both the media and private organizations to speak on the issues. The Coordinator must be able to speak out on the issues and to explain the policy. We do not believe that the report should imply that public and media speaking engagements or the production of documents may in some way constitute an improper activity.

Conduct of Classified Activities by IBC and IBC Possession of Classified Documents. The report unequivocally concludes that there was no real justification for the Secret classification of the FY 86 contract. However, on page 64, in a critique of prepared press guidance, the report states: "The inference that IBC worked only on unclassified activities pending receipt of its security clearance is erroneous. The records show, and anyone familiar with the contract should have known, that IBC was conducting allegedly 'classified' activities before receiving its clearance and, in fact, had completed all such activities before receiving the clearance." Either the activities were classified or they were not. If they were, then the contract was correctly classified. If they were not, then Department representatives should not be criticized for saying that classified activities were not conducted under the contract. It should also be noted that the press guidance was prepared after the contract was declassified.

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The quoted statement implies that anyone familiar with the contract should know that IBC was conducting "classified" activities. The statement of work included many activities, some of which may have been classified and some of which obviously were not, e.g., distribution of LPD publications. The report implies that because the contract was "classified" any activities conducted under the contract were by definition "classified." After S/LPD became ARA/LPD in the spring of 1986, the only substantive service provided by IBC was related to distribution services. This work was not classified.

The press guidance stated (page 63) "Procurement regulations allow classified work to be performed in such cases pending the receipt of the security clearances necessary to allow the signing of the contract." This statement may not be correct. If procurement regulations do not provide for this situation then the press guidance was incorrect and misleading and the report should so state. However, that is considerably different from implying that Department personnel knew that classified work was being done, but failed to acknowledge it.

The statement discussed on page 64 and statements regarding the IBC possession of classified documents on pages 73 and 74 apparently refer to the "Chronological Event Checklist," dated March 1, 1985, which is quoted on page 57. When the IBC contract became a public issue, ARA/LPD requested that IBC provide appropriate files on IBC activities under the contract. IBC provided a notebook containing various memos and status reports on February 11, 1987. Several Chronological Event Checklists, which were stamped Confidential, were in the inside jacket pocket of the notebook. No one presently in ARA/LPD had ever seen these checklists before. We are not aware of inspectors finding other copies in normal LPD files other than those provided to ARA/LPD by IBC in February 1987. To our knowledge, there is no evidence that S/LPD gave those checklists to IBC. It is unlikely that the checklist was developed at S/LPD since, as quoted, the document refers to State/LPD rather than S/LPD. The report should say that it is unknown, or that the IG was unable to determine, whether these checklists were provided to IBC by LPD personnel.

ARA/LPD was not aware of work that IBC was conducting for other clients, some of which may have been of a confidential nature. In the opinion of ARA/LPD personnel, no classified work was conducted for LPD under the FY 86 contract. If IBC was improperly doing classified work for others, it does not follow that ARA/LPD personnel "should have known" about it.

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Declassification of Contract. On page 72, the report discusses the declassification of the contract and criticizes the way in which the declassification was accomplished. These criticisms are valid; however, it should be noted that the handwritten declassification note was written in the Legal Advisor's office at the suggestion of the Legal Advisor to review the contract for possible declassification.

The report states on page 72 that, "We believe that the method of declassification indicates that the involved officials did not give much credence to the 'national security' contention in their earlier classification justification statements." This statement implies that the officials who declassified the contract and those who submitted the original justification statements were one and the same. This is not true. The decision to classify was made by members of S/LPD; none of which are still with ARA/LPD. The contract was declassified by Robert W. Kagan who was not affiliated with ARA/LPD until May 1986. Mr. Kagan is on record as stating that he does not think the contract should have ever been classified. Declassification was accomplished by Mr. Kagan, with the concurrence of the Legal Advisor, based upon the belief that activities conducted under the contract were not classified and in an attempt to be as responsive as possible to Congressional and media inquiries.

Exhibit D-Memorandum from A/OPR, dated June 23, 1987

United States Department of State

Washington, D.C. 20520

June 23, 1987



MEMORANDUM

TO: OIG/AUD - Lynn W. Burgener
FROM: A/OPR - Richard C. Faulkner
SUBJECT: IG Special Inquiry - IBC

I have carefully read your draft report on the International Business Communications (IBC) and make the following observations. I strongly believe that the report underemphasizes the amount of pressure, high level involvement and national security emphasis that were used to warrant said contract with IBC. The report places the majority of the fault with the Contracting Office and not with the Program Office, where I believe it should rightfully fall. This is not to say that OPR/STP/P is without fault; on the contrary, we have recognized our problem areas and have made a herculean effort to rectify our procurement weaknesses. My fault with the report may be in that area most of all. The recommendations on the whole are nothing that OPE and STP have not already been working on or are in place. Yet, no mention of that in the report.

I would now like to do a page-by-page response to your report:

(1) Page 2 - Last Paragraph

"P.O.s/contracts mismanaged": This refers to improper classification to avoid competition. This point confuses the issue. Contracting officers are obligated to rely on the judgement of program personnel with regard to the classification or sensitivity of matters within the purview of the program office. Only if the contracting officer has reason to believe that the program offices' statements are false or misleading is the contracting officer obligated to challenge such a determination. This, of course, was not the case in the IBC matter. The contracting officer had a reasonable basis to believe that a requirement from the Secretary's support element, S/S-EX, or memos tasking the Department from the National Security Council could very well be classified, and therefore, in our opinion, acted properly to withhold release from the Commerce Business Daily. (FYI: New procedures are now in place that require all classified procurements to be brought to my attention.)

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(2) Page 18 - First Paragraph

OPR/STP officials "condoned and assisted in the commission of unauthorized acts": The Procurement Division staff was grossly understaffed during most of this period. Nevertheless, when Program Offices provided adequate leadtime, documentation suitable for competition and sufficient support to identify sources, countless successful competitive procurements were completed. In this case, the Program Office exploited the situation by entering into unauthorized commitments, selecting the source, deciding upon dollar amounts and relying upon the contracting officer to correct the situation on an urgent and compelling basis to facilitate payment. By using the Office of the Secretary as a justification, the contracting officer was placed in a position of extreme duress, especially when national security issues were cited as a basis for immediate action. The early procurements, which even the S/IG report suggests were justifiable, then served as a precedent. The record suggests that as the dollar value of the procurement activity increased, and therefore became subject to more detailed contracting regulations, the contracting office increasingly attempted to force the Program Office to comply with the Federal Acquisition Regulation.

(3) Page 32 - Paragraph 1

"no attempt to seek competition or draft a synopsis on the final contract": Clearly, no attempt was made to secure competition on a contract which met the criteria for ratification, after eleven months of contract performance. To suggest that the Program Office would have considered some additional firms as technically acceptable would seem to indicate their willingness to provide data in direct conflict to all previous submissions. There is no reasonable basis to suggest that the Program Office would have ever considered any alternative to IBC.

There is also no basis to assume that the contracting officer would have drafted a proposed synopsis, when the program office was invoking national security issues involving potential life-threatening issues.

(4) Page 32 - Paragraph d.

Split Requisitions: The S/IG report properly indicates that "S/LPD officials were controlling this process by splitting their requirements", but inaccurately indicates that all of these contracts/purchase orders were "continuations of previous services", and that "OPR/STP contracting officials did not attempt to stop these S/LPD practices."

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Clearly some of the documents support the S/IG findings; however, the following should be considered:

(a) The two early purchase orders to Mr. Gomez were awarded by OPR/STP covering work from February through July, 1984.

(b) The next order (listed on Pg. 11) was to IBC and was awarded by the Foreign Service Institute and was unknown to the OPR contracting officials.

(c) A purchase order was issued to IBC by OPR/STP (Purchasing) covering work done from October through December, 1984.

(d) A contract was issued to IBC by OPR/STP (Contracts) covering work performed March through September, 1985.

(e) A purchase order was issued by a previously uninvolved purchasing agent to the Institute for North/South issues in September of 1985.

(f) The final contract was awarded by OPR/STP (Contracts) to IBC for a one-year period, ending in September of 1986.

The S/IG Report suggestion that OPR/STP did not challenge S/LPD's actions may be based upon the flawed assumption that there was sufficient time and organization available for this purpose. This was not the case. S/LPD knew what it was doing, and as their requirements grew in magnitude, they were increasingly challenged for documentation and justifications. However to suggest that OPR/STP could have taken the above list and fragmented series of events and challenged them is not realistic, based upon the organizational structure and time factors involved.

(5) Page 37 - Paragraph 1

Ref: responsibility determination on the 90K contract, and the suggestion that later delays on the security clearance could have been avoided: The delay in obtaining a security clearance on the 276K contract was due solely to the absolute failure of company officials and S/LPD officials to cooperate with OPR/STP and the Defense Investigative Service. Numerous attempts were made to secure the cooperation of the parties, but they totally ignored the requests of OPR/STP. In fact, all efforts to comply with established security procedures were generated by OPR/STP.

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While additional research could have been performed on the 90K contract to determine IBC's responsibility, the Contracting Officer relied heavily upon the previous successful performance of the contractor on Department of State projects. Such reliance is not uncommon, and the contracting officer may have pursued the course recommended by S/IG only if there was some reason to believe that a problem existed.

(6) Page 38 - Postaward Administration ... Last Para

..the timeframes are not unusual, as post award audits often take months to schedule and complete.: In fact, the Procurement Division had involved S/IG early on in the case of the 276K contract, by requesting a pre-award audit. This, along with the security clearance issue, was the reason that negotiations could not commence until August 1986.

In the fall of 1986, OPR/STP was havily involved in the procurment of over 1600 orders for "recurring services" That took precedence over post award matters. These services involved a wide range of services crucial to the performance of the Department of State mission. It is not uncommon under such circumstances to set priorities in favor of new awards, especially when all of our rights are preserved in the post award audit.

(7) Page 42, previously reported problems

.... In fact, the problems reported in the current review have been existent for many years. In response to the 1979 and 1983 audit reports, OPR/STP attempted to address the concerns cited therein. In fact, the A/OPR consultant studies on internal controls and the organization of the Procurement Division, conducted by Watson Rice Co. in 1985, were in response to the 1983 findings. A separate management study was also conducted by A/OPR during 1985 to analyze staffing and to propose a new organization.

As a result of this effort, a complete overhaul of the Procurment Division took place in 1986. Attempts to share the many initiatives currently underway in the Procurement Division seem to fall on deaf ears of the S/IG representatives. They chose to focus on the organization and guidance in place at the time, but did not review the many corrective actions that have already been put into place. For instance, the following corrective actions are in place or are well underway:

(a) Complete realignment to provide management controls throughout the Division.

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Twelve management and supervisory personnel will now monitor and direct activities in the Division. This is in contrast to the three personnel in place during the period in question. Most of the twelve personnel are in place or will be in place within the next few months. These personnel are experienced contract professionals with the training and background to provide the leadership required to prevent a recurrence of the situation which existed during most of the IBC matter.

(b) A detailed system of written guidance and procedures is well underway to establish uniformity and compliance with the latest FAR and statutory requirements. This system includes a Project Officers' Handbook to provide written guidance in standard format to all requiring activities; Procurement Division Memoranda providing internal guidance to contracting officers; and, a new contract file system with a totally overhauled procedure for tabs and indexing.

(c) A Contract Review Board, comprised of senior Division personnel, to review all new contracts and modifications exceeding \$100,000.

(d) An extensive emphasis to professional development, including the completion or scheduling of 55 courses for personnel assigned to the Procurement Division.

(e) An authorization to hire an additional 26 personnel, which has been continuously underway since June 1986. Division personnel assigned now include 47 direct hire personnel, with 17 contract personnel who will be phased out as additional direct hires are brought on board.

(f) The effective application of management techniques. The Procurement Division is currently operating on a well thought-out planned system of goals and objectives. Through the use of effective management principles, regular meetings are conducted with all supervisory personnel to insure compliance with current requirements. Performance is measured and monitored through the use of a management information system, previously developed but not fully utilized until now.

(8) Page 50 - Ref: reasonableness of price

... The incurred cost audit is being performed at the request of the Procurement Division. It was S/IG that conducted the original audit also, at the request of the Procurement Division. OPR/STP is well aware of the safeguards and uses the audit tool extensively to insure that costs are properly managed.

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Vouchers and performance were reviewed by LPD, so if there were significant deviations they should have reported them. Their consistent failure to observe even the fundamentals of the procurement process suggests that even with additional contract administration by OPR/STP, proper management of the contract would have been difficult.

(9) Page 63 - Last Paragraph

... The statement should be attributed to the originator, or at least they should indicate that no one from OPR/STP ever made such a statement. We were adamant about the security issue and never did anything but go by the book. It is my understanding that a Department official did make such a statement during Congressional staff briefings.

(10) Page 64 - Ref: responsiveness to the Hill.

... OPR/STP took the lead in trying to be responsive to the Hill. Every initiative to release information came from the Procurement Division, including phone calls from the DAS to others in the department and outside attempting to get the documents released. Whenever we developed a package for release it was always our personnel who walked the hall trying to get coordination from L, H, ARA, IWG, etc. The initial response to the February 10 meeting was delayed because of a misunderstanding that the transcript of that meeting was forthcoming, and that this would assist in the preparation of a response. At no time did any of the offices involved assume responsibility for a coordinated response.

(11) Page 70 ... It should be clear that the OPR/STP contracting officer tried to control the 90K contract by refusing to extend. Also, the contracting officer did not know that an extension would be required, until August 30. For a new award, the lead time would be about 180 days under the best circumstances. Therefore, it should be clear that the Program Office did not communicate with OPR/STP, and did not provide information necessary to conclude a successful procurement. The fact that they classified the effort further compounded the matter.

(12) Recommendations ... Corrective actions have already been identified, and in most cases, have been implemented. In fact, most actions were taken prior to the inquiry; thus, we feel that the recommendations are without merit, and only redundant. While A/OPE can codify them and provide Department-wide guidance, we have not delayed or waited for such guidance to implement corrective actions.

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The IBC contract issue is really a manifestation of a far greater problem. In reality, the practices of S/LPD -- and later ARA/LPD -- reflect a Department-wide failure to manage resources wisely. The Program Office knew the rules about competitive and sole-source procurements, enough to know that they wanted a sole-source procurement in each separate instance. They provided documentation to support every case. There is no reason to believe, in retrospect, that they would have, upon advise of the contracting officer, changed their requirements to go along with competition rules. They knew that the contracting officer would be influenced by the fact that their technical judgment was persuasive, and that these were issues of a sensitive/classified nature involving the National Security Council, S/S-EX and perhaps others. None of the facts suggest that a grossly overworked Procurement Division would have ever really been able to overrule the requirements office and direct a competitive procurement without the cooperation of the requiring activity.

Exhibit E - Memorandum from A/OPE dated June 26, 1987



United States Department of State

Assistant Secretary of State
for Administration

Washington, D. C. 20520

Office of the Procurement Executive
Room 227, State Annex Number 6

June 26, 1987

MEMORANDUM

TO: OIG/AUD - Mr. Lynn W. Burgener
THROUGH: A/EX - Mr. Jack D. Jenkins *for*
FROM: A/OPE - John J. Conway *John J. Conway*
SUBJECT: Draft Report - Special Inquiry into the
Department's Contracts with International Business
Communications

As requested in your memorandum of June 10, attached are my comments on OIG's draft report on the Department's contracts with International Business Communications (IBC) and its principal officers.

Thank you for allowing me the opportunity to comment on the report while it is still in draft. Should you have any questions with respect to my comments, please telephone me on 235-2352. Also thank Mr. John Payne for a time extension so that I could coordinate our response with A and A/OPR.

Attachment:
As stated

cc: A - Mr. Donald Bouchard (memo only)

**A/OPE Comments on OIG's Draft Report -
Special Inquiry into the
Department of State's Contracts with
International Business Communications and
Its Principals**

June 22, 1987

The Office of the Inspector General (OIG), at the request of the Secretary, performed a special inquiry into Department of State contracts with International Business Communications (IBC) and its principal officers. On June 10, OIG provided to A/OPE a copy of its draft report, with a request for written comments by June 24. This memorandum transmits A/OPE's comments on the report, including responses to those recommendations directed at A/OPE.

A/OPE does not take issue with the findings presented in the report, except when OIG declines to make any recommendations with respect to the need for the latter IBC contracts, after having stated that IBC was performing work that S/SPD's in-house staff should have been able to perform (page 17). A/OPE disagrees with the OIG statement that such a situation is not a matter for recommendations, particularly since that determination was identified as a specific objective of the inquiry (pages 6 and 7). A/OPE strongly objects to OIG's

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statement (page 17) that "[a]s long as funds are available, and the program manager can obtain those funds, contract resources can be increased." Taken at face value, this position could be used to justify massive year-end spending.

Otherwise, A/OPE considers the report to be thorough and fair. The report contains 16 recommendations, of which eight (numbers 2 through 9) are directed to A/OPE; in addition, recommendation 1 is within A/OPE's purview. Prefatory to its responses to these recommendations A/OPE offers the following comments for OIG's consideration.

Introductory Comments

One main finding of the report is that contracting officials in OPR/STP failed to enforce their legal and regulatory responsibilities. Because the report covers only one program, however, it does not address the larger issue of the ability of all Department contracting officials to enforce their authorities. If contracting officials can be faulted in general, it is perhaps for accommodating Department unwillingness, including at the upper levels of management, to follow the rules and to accept determinations made by those contracting officials. Too often when contracting officials have attempted to resist improper contracting, they have been "steamrolled" by a system that is indifferent to their legal

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and regulatory responsibilities. A positive result from this report would be a policy statement, signed by the Secretary, acknowledging that Department contracting officials have these legal and regulatory responsibilities and the authority to execute them (see OIG recommendation 1).

The report finds that OPR/STP/P contracting officials did not perform adequate contract administration. For preaward contract administration, A/OPE finds that the problem is not a lack of instructions, but a failure to perform. Problems with postaward administration, however, result from other circumstances. As OIG reports, this problem was reported by S/IG in 1979. S/IG supported in writing a request by OPR/STP/P for 12 positions, 6 of which would be used to build a contract administration function. This request was denied in the review process. In 1983, S/IG reported contract administration as deficient and again OPR/STP/P's request for contract administration staff was denied in the review process.

OPR/STP/P has continued to assign some postaward contract administration functions to the requirements offices. Under these circumstances, coordination is difficult between the contract administrators and the contracting officials. This does not excuse the lapses identified by OIG; it only attempts to clarify the historical aspects. A/OPE will work with

Department contracting activities in both file documentation.

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and procedures to strengthen the areas of contract administration, to include critiques of files (see OIG recommendations 5 and 6).

If Department contracting officials are regarded as "ordering clerks," it is because that is the way the Department wants it. For example, to ensure proper acquisition planning, which is covered in the report, contracting officials should participate in the budget process for each Department office that requests the acquisition of supplies or services, as it is at that point that acquisition strategies should begin (see OIG recommendation 7). This does not happen now, both by lack of consideration for procurement planning in the budget process and, heretofore, a lack of procurement personnel for that purpose.

The concept of acquisition planning is a practice that must be accepted as a Department philosophy. A/OPE has stated government-wide policy to all requirements offices and OPR/STP/P has attempted to enforce it, but the plain facts are that if a requirements office procrastinates long enough and time becomes of essence, the pressures on OPR/STP/P are insurmountable. The argument then is either project impairment, loss of one year funds, or both. OPR/STP/P contracting officials become the "bad guys" who make

"impossible demands" for conformance with government-wide policy.

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regulations.

If the recommendations in the report are to have any long-lasting impact, then top management, beginning with the Secretary, must throw their full support behind them. If not, the problems will not be resolved. For example, the Department of Energy had already established and staffed an independent procurement policy office when Executive Order 12352 "Federal procurement reforms" (attachment A), was signed on March 17, 1982, so it quickly implemented these new initiatives. When the Competition in Contracting Act became effective on April 1, 1985, the procurement policy staff developed a series of policies and procedures for implementing it, including a memorandum, signed by the Secretary of Energy and distributed agency-wide, on competition in contracting (see OIG recommendation 2). This occurred at about the same time the Department was just beginning to establish a procurement policy office.

The creation of the Office of the Procurement Executive exemplifies the Department's disinterest in its responsibilities for managing a procurement system and/or its unwillingness to provide the resources necessary to ensure that proper acquisition policies and procedures are established and enforced.

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A and A/OPR formally requested a budget and staff resources for A/OPE in Fiscal Years 1984, 1985, 1986, and 1987. The Department denied each request with the suggestion that A reprogram out of existing resources. Concurrent with these events, A had to respond on an emergency basis to the demands imposed by the \$360 million security supplemental appropriation and the succeeding establishment of the Bureau of Diplomatic Security.

A/OPE was established as a separate office on January 28, 1985, with no personnel allocations. The Chief, OPR/STP/P, was designated Acting Procurement Executive, concurrent with OPR/STP/P duties, but with no formal personnel action. After a meeting with OMB and the Office of Federal Procurement Policy (OFPP) on June 17, 1985, concerning the Department's noncompliance with Executive Order 12352, the position of Procurement Executive was divorced from OPR/STP/P. The formal personnel action was dated October 27, 1985, for a 90 day detail not to exceed February 23, 1986. One staff position was also detailed to the Procurement Executive, though an official personnel action was not processed.

In FY 1986, A/OPR transferred 4 positions to A/OPE and A/EX provided a "float" position for secretarial support--a total of 5 positions out of the 12 requested for A/OPE (attachment B).

The FY 1988 budget request contained 12 positions for A/OPE.

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subject to transfer back to A/OPR. This record speaks for itself; apparently, only A and A/OPR recognized the Department's responsibilities for managing its procurement system and were willing to ask for, and after the usual denials, allocate their own resources toward that end (attachment C).

Until A/OPE's creation in 1985, which some Department officers resisted for several years as unnecessary, the Department had no staff office responsible solely for managing its procurement system. One result was the three-year delay in completing the Department of State Acquisition Regulation, which also was cited in the report (see OIG recommendation 8). The Procurement Executive is the Department's principal officer assigned responsibility for its procurement policies, regulations, and procedures. The Procurement Executive's delegation of authority was signed on April 18, 1986, by the Assistant Secretary for Administration and published on May 6, 1986 (attachment D). The Procurement Executive's charter assigns significant responsibilities over 12 domestic and approximately 250 overseas contracting activities. Even with a staff of 10 professionals and 2 support this would be a taxing undertaking.

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Responses to Recommendations

Recommendation 1. The Department (A) should take appropriate actions to implement Department policies to ensure that program offices, including S-S/EX, ARA/EX, and ARA/LPD, are prohibited from performing the acquisition functions assigned to the contracting officers by the Federal Acquisition Regulation. Moreover, this policy should prescribe disciplinary action in those instances when a program official acts to commit the Government to contracts without the authority to make such commitments.

Response. A/OPE accepts this recommendation. The Department of State Acquisition Regulation (DOSAR, see recommendation 8), will establish the Department's basic public policies with respect to the responsibilities of programmatic and contracting officials in the acquisition process. Implementation of these policies will require new texts for the Foreign Affairs Manual, which A/OPE intends to begin this fiscal year. A/OPE believes that, in consideration of the importance of this issue and to ensure full Department compliance with its implementation, a policy statement should be prepared for the Under Secretary's (M) signature. The statement should acknowledge that Department contracting officials have these legal and regulatory responsibilities and the authority to execute them.

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Regarding disciplinary action against program officials usurping contracting officer authority, A/OPE believes that such a policy should be established, but only in broad terms; like the ratification action itself, any disciplinary action must be considered on a case-by-case basis. Depending on the specificity of the policy, the review and concurrence of M, and M/PER, and possibly the employee unions, may be required.

In 1984, the Procurement Executive issued a memorandum on ratifications to all executive directors and administrative officers (attachment E). Ratification also was mentioned in a 1986 memorandum on recurring services contracts, issued from the Deputy Assistant Secretary for Operations to all executive directors and administrative officers (attachment F).

Recommendation 2. The Department (A/OPE) should issue instructions to the OPR/STP contracting Officials to reaffirm their responsibilities to adhere to the competition requirements in the Federal Acquisition Regulation. If deemed appropriate by OPE, these instructions may be provided to other contracting officials in the Department.

Recommendation 3. The Department (A/OPE) should issue instructions to the OPR/STP contracting officials to stress their responsibilities to adhere to the requirements for

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publicizing proposed acquisitions in the Commerce Business Daily as required by Part 5 of the Federal Acquisition Regulation. If deemed appropriate by OPE, these instructions may be provided to other contracting officials in the Department.

Recommendation 4. The Department (A/OPE) should issue instructions to the OPR/STP contracting officials to stress their responsibilities to adhere to the small purchasing procedures in Part 13 of the Federal Acquisition Regulation. Specific instructions should be given to OPR/STP officials to detect and eliminate split requirements proposed by program officials.

Recommendation 5. The Department (A/OPE) should issue instructions to the OPR/STP contracting officials to define the preaward and postaward contract administration functions they are to perform. Moreover, OPE should conduct a random review of OPR/STP contracts during early FY 1988 to determine if the instructions are being followed by the OPR/STP contracting officials.

Recommendation 6. The Department (A/OPE) should issue instructions on the use of contract audit services for both preaward and postaward contract actions. Moreover, OPE should conduct a random review of OPR/STP contracts in early FY 1988.

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to determine if the instructions are being followed by the OPR/STP contracting officials.

Response. A/OPE does not accept the basic premise for recommendations 2 through 6. A/OPE is responsible for establishing Department procurement policies and procedures, not for issuing instructions to implement those policies and procedures. That is a responsibility of the operational elements, i.e., the managers and supervisors for the contracting activities. In its current configuration, OPR/STP/P supervisors are responsible for ensuring that its contracting personnel are instructed in the procedures followed by that activity. A/OPE expects that the OPR/STP/P supervisors are fully capable of instructing their staff in these procedures.

For example, in 1984, the Chief, OPR/STP/P, issued instructions to the OPR/STP/P staff on small purchase procedures and contract administration (attachments G and H). The current Chief, OPR/STP/P, issues "Procurement Division Memoranda," which again instruct OPR/STP/P personnel in operational procedures (attachment I).

Nevertheless, A/OPE will discuss these recommendations with the OPR/STP/P chief to determine the extent of assistance A/OPE can offer to that activity.

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A/OPE accepts recommendations 5 and 6 that A/OPE conduct random reviews of OPR/STP/P contracts in early FY 1988 to determine whether OPR/STP/P contracting officials are following their instructions. However, A/OPE notes that, at least for OPR/STP/P contract actions, postaward contract administration currently is usually delegated to the requirements offices. A/OPE will work with Department contracting activities in both file documentation and procedures to strengthen the areas of contract administration, to include critiques of files.

Regarding the compliance review function, A/OPE presently is constrained in that it has approximately one full time equivalent position available for the review (both preaward and postaward) of contracts issued by all eleven domestic Department contracting activities. A/OPE's review function initially concentrated on OPR/STP/P, and involved all acquisitions over \$100,000. To extend this review function to other Department contracting activities, A/OPE had to raise to \$500,000 the level of review for OPR/STP actions.

Recommendation 7. The Department (A/OPE in coordination with M and A) should take the actions necessary to implement an effective acquisition planning program within the Department as required by Part 7 of the Federal Acquisition Regulation.

Moreover, OPE should review the results of the planning system

in early FY 1988 to determine if it is achieving its purpose.

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results.

Response. A/OPE accepts the recommendation on implementing acquisition planning, though it is uncertain whether a "program" per se is necessary. Acquisition planning, as required by Part 7 of the Federal Acquisition Regulation and previously by OMB/OFPP policy letter, has not been fully implemented by the Department. To illustrate, over the last several years, officials in A have issued memoranda on acquisition planning (attachments J through L) and a number of memoranda on year-end spending (attachments M through O). This method has had only limited results in terms of meeting the requirements of FAR Part 7.

As intended by the FAR, A/OPE believes that for an effective acquisition planning process, contracting officials should participate in the budget process for each Department office that requires the acquisition of supplies or services by contract. The budget process itself comprises three major phases, i.e., formulation, mark-up, and approval; in theory, acquisition planning should be considered during each phase. Making acquisition planning effective, however, will require the full support of senior management.

From a management perspective, an acquisition planning process should include the following:

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and review. Because the roles and responsibilities of contracting officials in the Department's budget process have not been established by policy or implemented procedurally, A/OPE believes it will not be feasible to review acquisitions in early FY 1988 to determine whether acquisition planning is effective.

As an interim measure, A/OPE has drafted a policy directive that will deny a procurement action, other than for reasons of unusual and compelling urgency, to proceed without an approved acquisition plan included with the purchase request from the requirements office. This is an interim measure in that it concerns only acquisition planning for the approved budget. This may cause some requests to fail and/or the lapse of some one year money, but the larger objective will be met.

Recommendation 8. The Department (A/OPE) should complete the actions necessary to finalize the Department of State Acquisition Regulations as expeditiously as possible.

Response. A/OPE accepts the recommendation. The Department of State Acquisition Regulation (DOSAR) was published as a proposed rule in the May 28, 1987, edition in the Federal Register (52 FR 19990). The period for submission of comments closes on June 29, 1987. After reviewing those comments, A/OPE will publish the DOSAR as a final rule.

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become effective. Given the process for regulatory rule making, A/OPE projects that this should occur by late July or early August of this year.

Recommendation 9. The Department (A/OPE) should review the current delegation of procurement authority issued to the Foreign Service Institute (M/FSI) and determine whether it needs to be modified to preclude the use of the Registrar's authority to issue training orders for persons outside the Department using funds that are not M/FSI funds.

Response. A/OPE accepts the recommendation. Since A/OPE has not yet reviewed the specific authority cited in the recommendation, A/OPE cannot determine at this time whether the authority needs to be modified.

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Concluding Comments

A procurement system comprises personnel, management, and organization elements. Unfortunately, the report addressed only the first two. Department contracting officials soon recognize that while personnel and management inadequacies are real, the more intransigent problem is the Department's organizational mindset. Contracting officials know what happens when they try to enforce the regulations--their decisions are circumvented. This is not to denigrate the findings contained in the report, but to stress that the recommendations are not sufficient as they are directed at contracting officials without mentioning the role and responsibility of senior management to ensure that those officials have the authority commensurate with their responsibilities.

Contracting is a dynamic service function that works properly only when it is based on cooperation within the Department. Too often it has been allowed to degenerate into an adversary relationship between the programmatic and contracting officials. Contracting officials genuinely want to help the programmatic officials accomplish their missions, but the system seems to be stacked against them. If any proof is needed, just remember that the fourth quarter is rapidly

approaching; let's see how the Department reacts to the

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enforcement of the regulations by contracting officials.

A/OPE's acceptance of the report's recommendations and its intentions to initiate actions as stated must be considered in light of its resources relative to the responsibilities assigned in Delegation of Authority No. 120-3. Despite numerous requests by A, resources have not been forthcoming, which reflects a persistent insensitivity by upper management to the magnitude of these responsibilities.

Attachments:

As stated



**Comptroller General
of the United States**

Washington, D.C. 20548

B-229069

September 30, 1987

The Honorable Jack Brooks
Chairman, Committee on
Government Operations
House of Representatives

The Honorable Dante B. Fascell
Chairman, Committee on
Foreign Affairs
House of Representatives

Dear Mr. Chairmen:

This responds to your joint letter of March 31, 1987, requesting this Office to conduct an investigation and render a legal opinion on the legality and propriety of certain activities of the Office for Public Diplomacy for Latin America and the Caribbean (S/LPD) of the Department of State. Subsequent discussion with your staff limited the scope of the legal opinion to the issues of alleged lobbying and the development and dissemination of propaganda from 1984 to the present.

We conducted a review to develop the facts regarding the lobbying and propaganda issues, which consisted of interviews of knowledgeable individuals and a search of the S/LPD files. As a result of our review, we conclude that S/LPD's activities involving the preparation and dissemination of certain types of information violated a restriction on the use of appropriated funds for publicity or propaganda purposes not authorized by the Congress. We do not believe, however, that available evidence will support a conclusion that the applicable antilobbying statute has been violated. We are presently continuing a review of certain other S/LPD activities, and will keep you informed of our progress on a periodic basis.

THE PROPAGANDA ISSUE

According to Ambassador Otto J. Reich, who directed S/LPD from 1983 until 1986, the Office of Public Diplomacy for Latin America and the Caribbean was established within the Office of the Secretary of State in 1983 to engage in a campaign to influence the public and the Congress to support increased funding for the Administration's Central American policy. In pursuit of its public diplomacy mission, S/LPD used its own staff, and let a number of contracts with

1 2

outside writers, for articles, editorials and op-ed pieces in support of the Administration's position. Generally, S/LPD employed direct and overt methods in using the media to favorably influence the public to support the Administration's Central American Policy. However, information developed during the course of our investigation demonstrates that, on occasion, S/LPD also arranged for the publication of articles which purportedly had been prepared by, and reflected the views of, persons not associated with the government but which, in fact, had been prepared at the request of government officials and partially or wholly paid for with government funds.

For example, S/LPD arranged for a university professor, who was also paid as a consultant to S/LPD, to write a newspaper article in support of the Administration's Central America policy without alerting readers or, apparently, the newspaper that the government was involved. S/LPD described this technique in a March 12, 1985, internal memorandum to another Department of State office. Attached to that memorandum was an op-ed article entitled "Nicaragua is Armed for Trouble," which was ostensibly written exclusively by Professor John Guilmartin of Rice University, and published in the March 11, 1985 issue of the Wall Street Journal. The memorandum states that "Professor Guilmartin, who is a consultant to our office, and the Public Diplomacy staff worked extensively on this piece." However, the published article lists the author solely as John F. Guilmartin, Jr. and describes him as follows:

"Mr. Guilmartin is adjunct professor of history at Rice University in Houston. He was formerly a lieutenant colonel in the U.S. Air Force and editor of the Air University Review."

The Guilmartin article was one of five "white propaganda" operations described in a March 13, 1985, memorandum from S/LPD to the Assistant to the President and Director of Communications. The memorandum stated the following about the article:

"Attached is a copy of an op-ed piece that ran two days ago in The Wall Street Journal. Professor Guilmartin has been a consultant to our office and collaborated with our staff in the writing of this piece. It is devastating in its analysis of the Nicaraguan arms build-up. Officially, this office had no role in its preparation."

The memorandum also described as follows the use of consultants to write op-ed pieces for Nicaraguan opposition leaders:

"Two op-ed pieces, one for The Washington Post and one for The New York Times, are being prepared for the signatures of opposition leaders Alphonso Rubello, Adolpho Callero and Arturo Cruz. These two op-ed pieces are being prepared by one of our consultants and will serve as a reply to the outrageous op-ed piece by Daniel Ortega in today's New York Times."

A third item in the memorandum describes the use of a "cut-out" to arrange visits to various news media by a Nicaraguan opposition leader. Although the term is not defined, it appears to reflect an intention to hide the fact that the opposition leader's visits were being arranged by the government. The closing paragraph of the memorandum explains that S/LPD will not communicate its activities on a regular basis to the Director of Communications in part because "the work of our operation is ensured by our office's keeping a low profile."

The memorandum, which is enclosed with this opinion, was initially classified by the Department of State as "Confidential." Following our request, it was declassified by the Department on September 10, 1987. Three other documents similarly were declassified following our request.

The use of appropriated funds by the Department of State for certain types of publicity and propaganda is prohibited. Section 501 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act, 1985, Pub. L. No. 98-411, August 30, 1984, 98 Stat. 1545, which provided fiscal year 1985 funding for the Department of State, reads as follows:

"Sec. 501. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress."

The legislative history of section 501 is silent as to the intended effect of the restriction. See H.R. Rep. No. 197, 99th Cong. 1st Sess. 90 (1985). This Office has had numerous occasions in the past to interpret language similar to section 501. We have held that such a provision prohibits the use of federal funds for two distinct types of publicity and propaganda activities.

First, it prohibits "self-aggrandizement" activities on the part of a federal agency, which have been described by our Office as publicity activities of a nature tending to emphasize the importance of the agency or activity in question. 31 Comp. Gen. 311, 313 (1952), B-212069, October 6, 1983. Self-aggrandizement is not an issue in the present situation.

Second, we have construed the language of section 501 as prohibiting covert propaganda activities of an agency, which is the issue involved in the situations described above. In our decision B-223098, October 10, 1986, we held that editorials in support of a proposed reorganization of the Small Business Administration (SBA) prepared by SBA for publication as the ostensible editorial position of newspapers to which the editorials were submitted, were misleading as to their origin and reasonably constituted "propaganda" within the common understanding of that term.

We conclude that the described activities are beyond the range of acceptable agency public information activities because the articles prepared in whole or part by S/LPD staff as the ostensible position of persons not associated with the government and the media visits arranged by S/LPD were misleading as to their origin and reasonably constituted "propaganda" within the common understanding of that term. Therefore, under the rationale enunciated in B-223098, supra, these activities violated the "publicity and propaganda" prohibition of section 501.

We have been unable to estimate the amount of effort and funds expended on covert propaganda operations. Materials contained in S/LPD files indicate that covert propaganda operations were conducted on several other occasions and were not separated from routine legitimate activities. In view of the difficulty in determining the exact amount expended illegally, as well as the identity of any particular voucher involved, we conclude that it would not be appropriate in these circumstances to attempt recovery of the funds improperly expended. We recommend that the Department of State take action to insure that violations of appropriations restrictions contained in section 501 do not occur in the future.

THE LOBBYING ISSUE

The S/LPD staff carried on many activities designed to influence the public and the Congress to support the Administration's Central American policy, in keeping with the purpose for which S/LPD was established. Ambassador Reich gave a briefing to the Secretary of State

in which he explained that S/LPD's objective in attempting to influence Congress was:

"To gain sufficient bipartisan support in Congress to permit approval of increased assistance, economic and military, to Central America and to preclude crippling restrictions on actions in support of U.S. policy objectives in the region."

Sometime in 1983, S/LPD developed a close working relationship with a public interest group entitled "Citizens for America" (CFA). CFA is a nationwide grass roots organization engaged in lobbying and fund raising activities on behalf of Nicaraguan Contra causes. CFA has its headquarters in Washington, D.C. and is organized into regions and local district committees throughout the country, which are staffed with volunteer workers. Volunteers receive periodic instructions from CFA's Washington headquarters, when legislative action is scheduled in the Congress, to call and write members of Congress, to write letters-to-the-editor and op-ed pieces, and call in and appear on radio talk shows in support of the Administration's policy on Central America.

On March 4, 1984, the Chairman of CFA wrote the Secretary of State informing him of the details of his grass roots lobbying effort in support of the Administration's policy. Ambassador Reich, then head of S/LPD, prepared a draft response letter to the Chairman for the Secretary to sign. In the transmittal memo, Ambassador Reich described the close working relationship between CFA and S/LPD as follows:

"Citizens for America has been carrying out a public education campaign on Central America.

"Our office has a very good working relationship with Citizens for America and has provided CFA with a great deal of information.

"A word of encouragement and appreciation from you would go a long way toward letting CFA know we recognize and value their efforts."

Again on July 3, 1984, the CFA Chairman wrote the Secretary of State making the following request:

"We hope you will be able to contribute a one-page letter to our 'action kit' voicing your support for this vital aid and your feeling that Congress must address the issue this summer.

"This request is urgent. Your contribution will mean more op-ed pieces, letters to the editor, calls to Congressmen, and radio and television interviews -- the elements of grass-roots support so vital for effective political action.

"Thanks so much for your help. Anne Barton will be in touch with a member of your staff today to provide any details you might need."

Ambassador Reich prepared a draft response letter for the Secretary of State to sign. The draft letter was not used. Instead, the Office of the Secretary sent Ambassador Reich an extract from a statement by Secretary Shultz before the Subcommittee of Foreign Operations of the House Appropriations Committee on March 16, 1983, and instructed him to reply to the CFA Chairman. We could not locate a copy of Ambassador Reich's reply to CFA.

The annual Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act,^{1/} under which the Department of State receives its appropriations, does not contain a restriction on the use of such funds for lobbying. The only antilobbying legislation relevant to these circumstances is 18 U.S.C. § 1913, which reads in part as follows:

"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business."

Section 1913 further provides for penalties of a fine, imprisonment, and removal from federal service.

^{1/} See, e.g., Pub. L. No. 98-411, August 30, 1984, 98 Stat. 1545.

Because 18 U.S.C. § 1913 provides for criminal penalties, its interpretation and enforcement is the responsibility of the Department of Justice. This Office may, however, refer appropriate cases of apparent violations of 18 U.S.C. § 1913 to the Justice Department for prosecution. See, e.g., B-212235(1), November 17, 1983 (Commerce Department publication favoring revision of Export Administration Act referred to Justice). To our knowledge, there has never been a prosecution under this statute. B-217896, July 25, 1985. In addition, only a few court decisions have cited the statute and generally they have not dealt with the question of a violation, but have been concerned with peripheral issues. See, e.g., National Association for Community Development v. Hodgson, 356 F. Supp. 1399 (D.D.C. 1973); American Public Gas Association v. Federal Energy Administration, 408 F. Supp. 640 (D.D.C. 1976). See B-214455, October 24, 1984.

The Department of Justice interprets 18 U.S.C. § 1913 to apply only when funds are spent in a grass roots lobbying effort, where an attempt is made to induce members of the public to contact their representatives in Congress to persuade them to either support or oppose pending legislation. B-216239, January 22, 1985; 63 Comp. Gen. 624, 625-226 (1984).

We note that 18 U.S.C. § 1913 prohibits the use of appropriated funds for printed or written matter intended or designed to influence legislation pending before the Congress. If S/LPD expended any appropriated funds to develop the information provided to CFA, such expenditure might constitute a violation of 18 U.S.C. § 1913. On the other hand, if the information provided CFA was readily available within the Department of State, the expenditure of funds would not have been necessary, and the statute would not have been violated. See B-129874, September 11, 1978. We have not found any evidence indicating that S/LPD expended appropriated funds for such information. The only document found during our investigation that was given to CFA by S/LPD was a copy of testimony presented by the Secretary of State at a congressional hearing and was readily available. Accordingly, we found no evidence that would lead us to conclude that S/LPD violated 18 U.S.C. § 1913 in its relationship with CFA.

SUMMARY AND CONCLUSIONS

S/LPD engaged in prohibited, covert propaganda activities designed to influence the media and the public to support the Administration's Latin American policies. The use of appropriated funds for these activities constitutes a

violation of a restriction on the State Department annual appropriations prohibiting the use of federal funds for publicity or propaganda purposes not authorized by the Congress.

S/LPD also developed a close mutually supportive relationship with CFA, a nationwide grass roots organization engaged in lobbying and fund raising activities on behalf of Nicaraguan Contra causes. S/LPD acknowledges giving CFA a great deal of information. However, we have not found any evidence that S/LPD officials violated the applicable antilobbying statute.

Unless you publicly announce its contents earlier, we plan no further distribution until 30 days from the date of this opinion. At that time, we will send copies to interested parties and make copies available to others on request.

Sincerely yours,

for *Harry R. Van Cleave*
Comptroller General
of the United States

Enclosure



FILE COPY

Enclosure

United States Department of State

Washington, D.C. 20520

March 13, 1985

~~CONFIDENTIAL~~/EYES ONLY

TO: Mr. Pat Buchanan
Assistant to the President
Director of Communications
The White House

FROM: S/LPD - Johnathan S. Miller

SUBJECT: "White Propaganda" Operation

DEPARTMENT OF STATE A/CDC/MR

REVIEWED BY F. Smith DATE 9-16

RDS ☐ or XDS ☐ EXT. DATE
AUTH. REASON(S)
ENDORSE EXISTING MARKINGS ☐
DECLASSIFIED/RELEASABLE ☐
RELEASE DENIED ☐
PA or FOI EXEMPTIONS

Five illustrative examples of the Reich "White Propaganda" operation:

- Attached is a copy of an op-ed piece that ran two days ago in The Wall Street Journal. Professor Guilmartin has been a consultant to our office and collaborated with our staff in the writing of this piece. It is devastating in its analysis of the Nicaraguan arms build-up. Officially, this office had no role in its preparation.
- In case you missed last night's NBC News with Tom Brokaw, you might ask WHCA to call up the Fred Francis story on the "Contras." This piece was prepared by Francis after he consulted two of our contractors who recently had made a clandestine trip to the freedom fighter camp along the Nicaragua/Honduras border (the purpose of this trip was to serve as a pre-advance for many selected journalists to visit the area and get a true flavor of what the freedom fighters are doing; i.e., not baby killing). Although I wasn't wild about the tag line, it was a positive piece.
- Two op-ed pieces, one for The Washington Post and one for The New York Times, are being prepared for the signatures of opposition leaders Alphonso Rubello,

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Deci: OADR

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- 2 -

Adolpho Callero and Arturo Cruz. These two op-ed pieces are being prepared by one of our consultants and will serve as a reply to the outrageous op-ed piece by Daniel Ortega in today's New York Times.

- **Through a cut-out, we are having the opposition leader Alphonso Rubello visit the following news organizations while he is in Washington this week: Hearst Newspapers, Newsweek Magazine, Scripps Howard Newspapers, The Washington Post (Editorial Board), and USA Today. In addition, the CNN "Freeman Report," the "McNeil-Lehrer Report," the "Today Show" and CBS Morning News have been contacted about the availability of Mr. Rubello.**
- **Attached is a copy of a cable that we received today from Managua. The cable states that Congressman Lagomarsino took up Daniel Ortega's offer to visit any place in Nicaragua. You may remember that Ortega received a good deal of publicity on his "peace" proposal when he stated that he welcomed visits by Members of Congress, stating that they would be free to go anywhere they wished. As the cable notes, the Congressman's request to visit an airfield was denied. Do not be surprised if this cable somehow hits the evening news.**

I will not attempt in the future to keep you posted on all activities since we have too many balls in the air at any one time and since the work of our operation is ensured by our office's keeping a low profile. I merely wanted to give you a flavor of some of the activities that hit our office on any one day and ask that, as you formulate ideas and plans of attack, you give us a heads-up since our office has been crafted to handle the concerns that you have in getting the President's program for the freedom fighters enacted.

Attachments:

- 1. Op-ed piece by Professor Guilmartin.**
- 2. 85 Managua 1523.**

~~CONFIDENTIAL~~

GAO

United States General Accounting Office

Report to: Congressional Requesters

October 1987

CONTRACTING

State's Administration of Certain Public Diplomacy
Contracts





United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-229069

October 30, 1987

The Honorable Jack Brooks
Chairman, Committee on
Government Operations
House of Representatives

The Honorable Dante B. Fascell
Chairman, Committee on
Foreign Affairs
House of Representatives

In response to your request dated March 31, 1987, this report provides the results of our assessment of contracting activities at the Department of State's Office of Public Diplomacy for Latin America and the Caribbean (LPD).

LPD was established at the Department of State in mid-1983 by a White House decision memorandum for the Special Planning Group.¹ LPD is an "interagency office" and has been staffed by personnel from the military services, the U.S. Information Agency, the Agency for International Development, and other offices within the Department of State. The office has regularly interacted with other government offices, including the National Security Council.

LPD's stated goal is to promote a better understanding of U.S. policy toward Latin America and the Caribbean. Its activities have been directed at educating, informing, and influencing foreign and domestic audiences on the administration's foreign policy objectives in Latin

¹The Special Planning Group, under the National Security Council, was established by a National Security Decision Directive in January 1983. The group was tasked with the overall planning, direction, coordination, and monitoring of the implementation of public diplomacy activities relative to national security.

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B-229069

America. The former Coordinator² of the office described the public diplomacy objective towards Congress as one directed "to gain sufficient bipartisan support in Congress to permit approval of increased assistance, economic and military, to Central America and to preclude crippling restrictions on actions in support of US policy objectives in the region."

In carrying out its objectives, LPD contracted with numerous individuals and several companies, mostly for written products. We found that, in doing so, LPD generally did not follow federal regulations governing contractual procedures. Specifically:

- The justifications to support the exclusive use of sole-source contracting by LPD were inadequate.
- Various other procurement requirements were not adhered to in awarding contracts, such as encouraging competition, obtaining required contract officer approvals before engaging contractors, and, in one case, abiding by limitations on the salary paid to a retired military officer.
- Many products were different from those contracted for with no evidence that agreement was reached on changes to contract specifications.

In our evaluation of LPD's use of contractors, we reviewed 25 contracts entered into since the office was established and valued at approximately \$263,000. All were for professional services. Most of the contracts were for written products dealing with conditions and U.S. policy in Latin America. However, few of the contractor's products were directly incorporated into LPD publications.

No similar contracts have been initiated by LPD since February 1986. In March 1986, LPD was transferred from the Office of the Secretary of State to State's Bureau for Inter-American Affairs and a new Coordinator was appointed.

The only LPD professional service contracts we did not review were those under separate investigation by the Congress and the Department of State's Office of the Inspector General. These separate investigations include contracts awarded to International Business Communication.

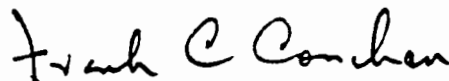
²The person directing LPD's efforts is designated as Coordinator to reflect the interagency character of the office. Since its establishment, LPD has had two Coordinators.

B-229069

Inc., the Institute for North-South Issues, and to Mr. Frank Gomez.

Details of our review are provided in appendix I. We discussed the facts and circumstances surrounding the 25 contracts we examined with the current and the former Coordinators of LPD and have included their comments as appropriate. The current Coordinator said that, because the contracts reviewed covered the period prior to his appointment, he was not able to offer substantive comments. The former Coordinator said that he was generally unfamiliar with the details related to the office's contracting procedures. Instead he relied on his staff as well as State's procurement office to ensure that federal regulations were adhered to. As requested, we did not obtain written comments.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its date. At that time, we will send copies to the Department of State, the Office of Management and Budget, and other interested parties.



Frank C. Conahan
Assistant Comptroller General

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LPD'S CONTRACTING PRACTICES
DID NOT COMPLY WITH FEDERAL REQUIREMENTS

The Office of Public Diplomacy for Latin America and the Caribbean (LPD) was established in June 1983 by a White House decision memorandum. Its creation reflected the President's concern that efforts be made to deepen the understanding of and support for the administration's policies in Central America. The efforts were intended to be focused on foreign, as well as domestic, audiences. The purpose of LPD activities was to inform, educate, and influence the public on U.S. foreign policy issues in the region.

Until February 1986, LPD awarded many professional service contracts¹ and relied heavily on them to carry out its mission. Our review of those contracting activities showed that government regulations for contract administration were not followed. LPD did not adequately support its exclusive use of sole-source contracts. Other procurement requirements to ensure competition and to limit compensation were also not followed. In addition, most of the contractors' written products we reviewed were substantially different from the respective contract's original scope of work, and few were incorporated directly into LPD publications.

LPD'S ORGANIZATION AND ACTIVITIES

From its inception in mid-1983, LPD has been an interagency effort with personnel and support staff from the military services, the U.S. Information Agency, the Agency for International Development, and other offices in the Department of State. LPD was originally placed under the Office of the Secretary of State.

In March 1986, LPD was transferred from the Office of the Secretary of State to State's Bureau of Inter-American Affairs and placed under a new Coordinator, the Deputy for Policy and Public Affairs. One of the reasons for and benefits of the move, according to the current Coordinator, was to integrate the office more fully into State's operations. This also allowed the office to obtain resources more readily from other offices in the Bureau.

LPD addressed its mission in part by arranging speaking engagements for State Department officials, producing publications for domestic and international distribution, and participating in special projects--such as an arms display of weapons captured from Salvadoran guerrillas. From October 1983 through November 1984, LPD and State's Office of Public Affairs scheduled speaking engagements and interviews in hundreds of cities. LPD also

¹Most of the contracts we examined were valued at less than \$10, and are, for purposes of certain federal regulations, called "purchase orders." For purposes of this report we refer to them as contracts.

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distributed publications to an extensive audience, including the private sector, key government officials, and U.S. ambassadors and embassy political section chiefs in Latin American and European countries.

Use of Contractors to Address LPD Mission

Although these types of activities (i.e., speaking engagements, production of publications) continue, LPD's use of contractors has been substantially reduced since the office was moved and the new Coordinator was appointed. Prior to that time, contractors were used extensively. According to the former Coordinator, this was necessary to "...accomplish the voluminous research, production of special papers, and media exposure necessary to carry out our mission, all the while keeping our office team small and manageable." The nature of some of the LPD contractor activities became a source of media attention and, subsequently, the subject of congressional and administration inquiries.

During the first 6 months of LPD's existence, four officers on average (including the Coordinator) staffed the office. From January 1984 until January 1986, LPD employed 13 professional staff, on average. Even with the increase in professional staff, LPD continued to rely heavily on professional service contracts. The former Coordinator stated that this was necessary because LPD's work increased at a greater rate than did the staff to address the demands.

LPD has not initiated any new professional service contracts since February 1986. The only contract carried over is with the U.S. Air Force for a clippings service on news events related to Latin America and the Caribbean. The office currently functions with an average of 10 professional staff. The duties of former contractors have been absorbed within LPD. For example, the functions of a media consultant/intelligence analyst, previously performed by contract, are done by the Coordinator and his deputies. Publications are also written without contractors. The mailing list, developed by contract, is being maintained by LPD personnel.

REQUIREMENTS FOR CONTRACT
ADMINISTRATION WERE NOT FOLLOWED

Our review focused on the administration of LPD professional service contracts awarded from mid-June 1983 to February 1986. We reviewed 25 contracts with a total value of approximately \$263,000. We found that LPD generally did not follow federal requirements and procedures governing contract award and administration.

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Other Procurement Requirements
Were Not Followed

Various other regulations governing the acquisition process were not adhered to by LPD or OPR/STP in contracting out for services. We found that LPD virtually eliminated competition in contract award procedures, engaged the services of contractors before required approvals were obtained, and awarded several contracts to an individual that circumvented pay limitations for retired military officers.

According to contracting officials in OPR/STP, they find it difficult to be knowledgeable of alternative sources for the types of services required by LPD. That is, unlike procuring equipment from various established manufacturers, it is more difficult to be aware and evaluate the quality of a prospective author's ability to produce an authoritative statement about a subject related to activities in Latin America. According to these officials, the lack of knowledge about alternatives inhibited their efforts to locate potential competitors.

In addition to the difficulty associated with identifying alternative sources, OPR/STP officials felt that they were under considerable pressure by LPD to accept the sole-source recommendations. For example, contracting officials provided us with various documents from high-level government officials that stressed the importance of LPD's activities. Such documents, according to the contracting officials, were used to support LPD's requests for expedited handling of their sole-source procurements.

The former Coordinator disagreed with OPR/STP officials' view that LPD applied pressure to obtain acceptance of its sole-source recommendations. He noted that, while he tried to get priority processing for LPD's requests because of the urgency he felt in addressing the office mission, he never intended that procurement regulations be bypassed.

Little effort to identify competition

We found little evidence in LPD or OPR/STP files to indicate that any effort was made to locate other sources to compete on LPD contracts. CICA provides that while competition may be restricted for reasons of unusual and compelling urgency, the contracting officer must solicit offers from as many potential sources as is practicable. Even a sole-source procurement requires such an effort to help support the sole-source justification.

For sole-source procurements exceeding \$10,000, CICA requires synthesizing the proposed contract in the Commerce Business Daily.

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encourage competition.⁴ Of the contracts we reviewed, eight were above \$10,000 and should have been synopsisized and published. Yet, in only one instance did OPR/STP give notice of its intended sole-source procurement in the Commerce Business Daily.

For the contracts valued at less than \$10,000, some effort is required to locate alternative sources even if that effort consists of no more than a few telephone inquiries. The Federal Acquisition Regulation (FAR), part 13, which sets forth small purchase procedures, requires that for oral solicitations, the contracting office establish and maintain records of suppliers contacted and the prices and other terms and conditions quoted by each. We found no evidence in the contract files, however, to indicate that such efforts were made.

With one exception, we found no attempts by LPD or OPR/STP to locate competitive sources for LPD. The exception was a contract for a media consultant/intelligence analyst which LPD wanted to issue as a sole-source procurement. In April 1985, after receiving an advance planning document from LPD, OPR/STP attempted to fill the requirement through competition. At the time, these services were being provided by Mark Richards Associates, Inc. (MRA). MRA had performed this function under various sole-source contracts since July 1984, and LPD sought to continue the arrangement.

Using the LPD planning document, OPR/STP located another source interested in competing for the work. According to information in the contract files, however, LPD withdrew its requirement for these services before this potential contractor could be interviewed. A few months later, in September 1985, LPD requested the continued services of MRA, citing "unusual and compelling urgency" as the basis to award a sole-source procurement. LPD also added that the character and sensitivity of the services precluded disclosure of the contractual arrangement to the public.

According to OPR/STP contracting officials, it appeared that delaying the announcement of a known and intended procurement was used by LPD to apply additional pressure on OPR/STP to approve the sole-source procurement for MRA. This technique conflicts with CICA, which states: "In no case may an executive agency...enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning...."

Regarding the sensitivity of the services to be performed, a State Department legal advisor noted that "...it is plainly inconsistent for...LPD to assert in an unclassified draft sole source justification that these contract arrangements should not be

⁴41 U.S.C. §416. There was a similar requirement before CICA was enacted.

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disclosed to the public." The contracting officer concluded that "...through advance procurement planning prior to expiration of the new contract on September 30, 1986, the entire competitive procurement process will be initiated to assure full and open competition." However, LPD began performing the function in-house after completion of the contract.

Some work apparently begun
before contracts were issued

FAR requires that "no contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met."

In three procurements, contractor work was apparently begun before being approved by OPR/STP. In effect, OPR/STP had to ratify the work after it was begun. In one instance, the contracting officer approved the requisition on January 6, 1984, for the production of a paper that was to be completed 5 days before; the contractor's paper was dated December 20, 1983. Another requisition specified that the contract period was to run from December 10 to December 24, 1984. The request was not submitted, however, until December 19 and was not approved until February 9, 1985. It appears that the contractor began work prior to contract approval. In a third instance, a note in LPD's contract file for a particular contractor said that "OPR/STP needs the date [the contractor] will perform services. As we know, he has already performed them."

In the first two instances, rather than advising LPD that its actions were counter to contracting procedures, the contracting officer appears to have approved the acquisitions without comment. In the third instance, it is unclear whether OPR/STP was ever aware of the note indicating that the services were performed prior to a contract being issued.

Contracts avoid
pay cap limitations

Two Office of Management and Budget (OMB) circulars restrict the use of contracts to avoid salary limitations for former government employees. In a series of contracts with MRA, LPD did not adhere to those requirements. A total of approximately \$136,000, or over 50 percent of the value of the contracts we reviewed, was paid to MRA. The company is owned and operated by retired Colonel Mark Richards.

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The OMB circulars require that

- functions previously performed by government employees shall not be converted to contract solely to avoid personnel ceiling or salary limitations;⁵
- consulting services are normally to be obtained only on an intermittent or temporary basis, repeated or extended procurements are not to be made,⁶ and consulting services are not to be used to circumvent pay caps and other pay limitations; and
- consulting service contracts will be competitively awarded to the maximum extent practicable to ensure that costs are reasonable.⁷

Colonel Richards was detailed to LPD in January 1984. He became a Senior Advisor on the staff of LPD. As a staff member of LPD, he was responsible for providing information to the media, reviewing cable traffic from U.S. embassies in Central America for information useful to LPD, reviewing the content of LPD publications for accuracy, and developing press kits for the media. When the Coordinator learned of Colonel Richards' impending retirement from the Air Force in July 1984, he decided to retain his services at LPD.

As a military retiree, Colonel Richards would be subject to dual compensation limitations if employed as a consultant (5 U.S.C. §5532). This would reduce his military retirement pay. According to Colonel Richards, the reduction was unacceptable.

Accordingly, Colonel Richards incorporated himself, and the State Department negotiated a sole-source contract with MRA for media consultant services. Colonel Richards retired on June 30, 1984, and began work as a media contract consultant on July 1, 1984. Between July 1984 and February 1986, LPD awarded MRA four short-term contracts allowing him to serve continuously on the LPD

⁵Section 7c (6), OMB Circular No. A-76 Revised, August 4, 1983, Subject: Performance of Commercial Activities.

⁶Section 6 b-d, OMB Circular No. A-120, April 14, 1980, Subject: Guidelines for the Use of Consulting Services.

⁷Section 8, OMB Circular No. A-120.

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staff.⁸ This permitted him to continue working for LPD without a reduction in his retirement pay. According to Colonel Richards, he performed the same job he did while he was on detail. His supervision, clerical support, access to files, and working hours at the State Department were the same.

Many Contract Products Differed
From Contract Scope of Work

LPD made extensive use of professional service contracts to obtain written products from individuals outside of government. Justification for the use of the contractors was based on their unique insights or expertise on Latin America, which LPD asserted was not available in-house. Of the 25 contracts we reviewed, 16 specified one or more original written products (41 in all).⁹ Most of the contractor products we were able to obtain, however, differed substantially from the contract scope of work. According to LPD personnel, few were incorporated into LPD publications.

Our analysis was hampered by the lack of products in LPD files. Through a file search and some contacts with previous contractors, we were able to obtain 28 of the 41 research papers. According to a State contract specialist, OPR/STP recently addressed this problem by requiring copies of final products for its contractor files.

Sole-source procurements were used to obtain the services of each contractor, and their use was justified on the basis of (1) unique abilities and expertise and (2) LPD's urgent need for the specified product. However, only 13 of the 28 products we obtained addressed the topic specified in the original scope of work. In the other cases, the product for which there was an "urgent need" was not produced; rather, a substitute topic was addressed.

For example, the scope of one contract specified topics for four research papers. None of the papers were written. Instead, a number of substitute products were produced on topics not specified in the scope of work. For instance, in place of one paper on "Cuban and Nicaraguan Involvement in Drug Trafficking," the contractor wrote (1) a memorandum on the "World Court and Nicaragua," (2) an editorial on "Morality and the Central America Issue," and (3) a paper entitled "The Managua Connection: The Sandinistas and Middle Eastern Terrorists." We found no justification that the contractor selected as uniquely qualified to

⁸The last contract for MRA expired September 1986.

⁹Several types of products were requested in the contracts. Most were research papers, but short articles and essays were specified in some contracts. These are not included in the product total.

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write on the original topic was also uniquely qualified to write on the new topics. We also found no contract modification to reflect a change in the product or evidence that attempts were made to find the necessary expertise elsewhere. This example was typical of the other cases in which the contractor product differed from the contract's original scope of work.

According to the former Coordinator, the need for contractors was crucial in the office's early days before LPD built a staff and expertise in Latin American public diplomacy. We found, however, that of the 13 LPD publications issued during its initial 18 months (through the end of 1984), only 2 were based on the work of LPD contractors. The former Coordinator commented that contractors' work on formal publications is not, by itself, a comprehensive indicator of contractor contributions since they also worked on other products, such as speeches and background materials. However, we noted that these types of products were not in LPD's files and, in most instances, were not in the respective contract's scope of work.

COORDINATORS' COMMENTS

The current LPD Coordinator told us that he was unable to comment on the facts and circumstances surrounding the 25 LPD contracts we examined because they related to events which occurred prior to his appointment. The former Coordinator noted that, even though he was in charge of LPD when the contracts covered in our review were awarded, he was generally unfamiliar with their details. In all cases, including those in which he was more knowledgeable, the former Coordinator commented that he relied on his staff, as well as OPR/STP, to ensure that all procurement requirements were met. He added that approval of the contracts by OPR/STP was an indication to him that all regulations had been dealt with properly.

OBJECTIVES, SCOPE, AND METHODOLOGY

We examined the operations of LPD to determine the extent to which LPD used contractor services and whether contract awards were made in accordance with federal acquisition requirements. In all, we examined the circumstances related to 25 LPD contracts for professional services. The only LPD professional service contract we did not review were the seven under separate investigation by the Congress and the Department of State's Office of the Inspector General. These seven contracts had been awarded to International Business Communications, Inc., the Institute for North-South Issues, and Mr. Frank Gomez.

We interviewed LPD personnel, including some past officers, and contract officials in OPR/STP. In addition, we interviewed some individuals who had been under contract with LPD to discuss their products and how they were ultimately used. We also examined LPD contractor and related files as well as those maintained by OPR.

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to ascertain whether LPD and contracting officials complied with federal acquisition requirements.

In a separate letter to you, we provided our legal opinion on whether LPD violated statutes prohibiting certain lobbying and propaganda activities.¹⁰ In that opinion, we concluded that LPD had violated a restriction on the use of appropriated funds for publicity or propaganda purposes. The former Coordinator disagreed with that conclusion but has not provided any information which would cause us to change our position.

Our review was conducted from April to September 1987. Because the primary focus of our review was on LPD's administration of its contracts, we did not evaluate State's internal controls governing contracting. We are, however, conducting a separate assessment of State's procurement function, including sole-source awards. Except for this limitation, our review was conducted in accordance with generally accepted government auditing standards.

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¹⁰B-229069, September 30, 1987.

Congress of the United States

Committee on Foreign Affairs

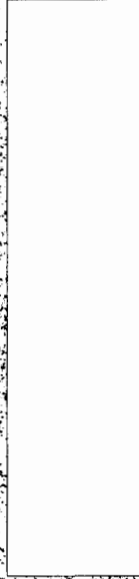
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